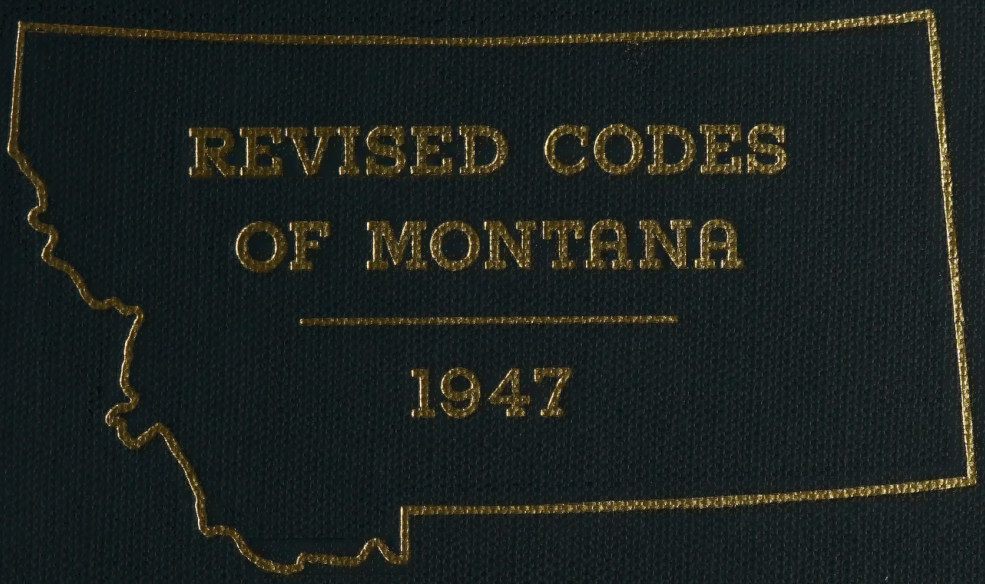


REVISED CODES OF MONTANA

1947

2d REPLACEMENT

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PART 2

PROPERTY OF
SUPREME COURT
State of Montana

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1947

ANNOTATED

NINE VOLUMES

COMPILED, REVISED AND ANNOTATED
UNDER CHAPTER 184, LAWS OF 1945 AND CHAPTER 266, LAWS OF 1947
AND PUBLISHED UNDER CHAPTER 43, LAWS OF 1947

I. W. Choate

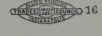
Wesley W. Wertz

CODE COMMISSIONERS
OF THE 1947 CODES

SECOND REPLACEMENT
VOLUME 1
PART 2
Aeronautics to Cities and Towns

Containing the Permanent Laws of the State in Force
at the Close of the Extraordinary Session of the
Fortieth Legislative Assembly of 1967

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PREFACE

to

Second Replacement Volume One (Part 2)

The original Volume One of the Revised Codes of Montana, 1947 was first replaced after the 1957 Session of the Legislative Assembly. Because of new legislation and the size of the contents of Volume One it was necessary to issue the Replacement in two separate volumes, entitled Part 1 and Part 2. Volume One, Part 1 contains the constitutions, other basic laws of Montana, and the revised tables.

Since the publication of Replacement Volume One, Part 2, numerous new laws, amendments and annotations have been inserted into the supplements for this book and the 1967 Cumulative Pocket Supplement contained nearly 300 pages. A new issue of Replacement Volume One, Part 2 was suggested by the publishers in accordance with the replacement program approved by state authorities and the Montana Bar Association. Publication of this second edition was approved by the Supreme Court of Montana under the authority granted to it by Laws 1967, Chapter 304 (Sec. 12-332.1, Repl. Vol. 2 (Part 1), Revised Codes of Montana, 1947).

This Second Replacement Volume One, Part 2 contains all existing laws in Titles 1 through 11 of the Revised Codes through the regular session and the first extraordinary session of the Fortieth Legislative Assembly. All notes and annotations have been brought to date. Obsolete laws, local and special laws, appropriation acts, resolutions, and enacting and repealing clauses are excluded.

The arrangement and numbering system of the first replacement volume have been retained; hence the General Index and its supplement may be used as before in locating particular laws. Legislative history references have been brought to date and no changes have been made in the general style used heretofore.

The annotations to decisions of the Supreme Court of Montana and to the Supreme Court of the United States and other Federal courts have been checked and added through Volume 149 Montana Reports, 438 Pacific 2d, Volume 385 United States Reports, Volume 17 Lawyers' Edition 2d, Volume 87 Supreme Court Reporter, Volume 390 Federal Reporter 2d, Volume 280 Federal Supplement, and 18 American Law Reports 3d.

This volume may be cited as 2d Repl. Vol. 1 (Part 2), Revised Codes of Montana, 1947. When referring to sections, we recommend citing "Sec. —, 2d Repl. Vol. 1 (Part 2), Revised Codes of Montana, 1947."

To Wesley W. Wertz, Code Commissioner of the 1947 Codes, we extend our thanks for his advice and able assistance in the preparation of this volume.

The Publishers

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AERONAUTICS

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CHAPTER 1

STATE AERONAUTICAL REGULATORY ACT—DEFINITIONS—POLICY

Section 1-101. Act, how cited.
1-102. Definitions.
1-103. Declaration of policy.

1-101. Act, how cited. This act, divided into titles and sections according to the following table of contents, may be cited as the "State Aeronautical Regulatory Act."

History: En. Sec. 1, Ch. 152, L. 1945.

NOTE.—The table of contents which follows the above section in the session laws of 1945, is omitted because it does not conform to the titles and chapters of this code.

Nature of Law

This law is a regulatory measure. State ex rel. State Aeronautics Commission v. Board of Examiners, 121 M 402, 194 P 2d 633, 637.

1-102. Definitions. 1. For the purpose of this act, the following words, terms, and phrases shall have the meanings herein given, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires.

2. "Aeronautics" means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance or airports, restricted landing areas, or other air navigation facilities, and air instruction.

3. "Aircraft" means any contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air.

4. "Public aircraft" means any aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any state, territory, or possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

5. "Civil aircraft" means any aircraft other than a public aircraft.

6. "Airport" means any area, of land or water, except a restricted landing area, which is designed for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights of way, whether heretofore or hereafter established.

7. "Commission" means the state aeronautical commission created by this act; "state" or "this state" means the state of Montana.

8. "Restricted area" means any area of land, water or both, which is used or is made available for the landing and take-off of aircraft, the use of which shall, except in case of emergency, be only as provided from time to time by the commission.

9. "Air navigation facility" means any facility other than one owned or controlled by the federal government, used in, available for use in, or designed for use in, aid of air navigation, including airports, restricted landing areas, and any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, on constituting an advantage or convenience, to the safe taking-off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted area, and any combination of any or all of such facilities.

10. "Air navigation" means the operation or navigation of aircraft in the air space over this state, or upon any airport or restricted landing area within this state.

11. "Operation of aircraft" or "operate aircraft" means the use of aircraft for the purpose of air navigation, and includes the navigation or piloting of aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, shall be deemed to be engaged in the operation of aircraft within the meaning of the statutes of this state.

12. "Airman" means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way and (excepting individuals employed outside the United States, any individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection therewith, and any individual performing inspection or mechanical duties in connection with aircraft owned or operated by him) any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances; and any individual who serves in the capacity of aircraft dispatcher or air-traffic control-tower operator.

13. "Air instruction" means the imparting of aeronautical information by any aeronautics instructor or in or by any air school or flying club.

14. "Air school" means any person engaged in giving or offering to give, instruction, in aeronautics, either in flying or ground subjects, or both, for or without hire or reward, and advertising, representing, or holding himself out as giving or offering to give such instruction. It does not include any public school or university of this state, or any institution of higher learning duly accredited and approved for carrying on collegiate work.

15. "Aeronautics instructor" means any individual engaged in giving instruction, or offering to give instruction, in aeronautics, either in flying or ground subjects, or both, for hire or reward, without advertising such occupation, without calling his facilities an "air school" or anything equivalent thereto, and without employing or using other instructors. It does not include any instructor in any public school or university of this state, or any institution of higher learning duly accredited and approved for carrying on collegiate work, while engaged in his duties as such instructor.

16. "Flying club" means any person other than an individual, which, neither for profit nor reward, owns, leases, or uses one or more aircraft for the purpose of instruction or pleasure or both.

17. "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

18. "State airway" means a route in the navigable air space over and above the lands or waters of this state, designated by the commission as a route suitable for air navigation.

19. "Navigable air space" means air space above the minimum altitudes of flight prescribed by the laws of this state or by regulations of the commission consistent therewith.

20. "Municipality" means any county, city, village or town of this state and any other political subdivision, public corporation, authority, or district in this state which is or may be authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities.

21. "Airport protection privileges" means easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation thereof.

22. "Airport hazard" means any structure, object of natural growth, or use of land, which obstructs the air space required for the flight of aircraft in landing or taking off at any airport or restricted landing area or is otherwise hazardous to such landing or taking off.

23. The singular shall include the plural, and the plural the singular.

History: En. Sec. 2, Ch. 152, L. 1945.

References

Holtz v. Babcock, 143 M 341, 389 P 2d 869.

Collateral References

Aviation⇐1.
2 C.J.S. Aerial Navigation § 1.

1-103. Declaration of policy. It is hereby declared that the purpose of this act is to further the public interest and aeronautical progress by providing for the protection and promotion of safety in aeronautics; by co-operating in effecting a uniformity of the laws relating to the development and regulation of aeronautics in the several states; by revising existing statutes relative to the development and regulation of aeronautics so as to grant to a state agency such powers and impose upon it such duties that the state may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property within such jurisdiction, may assist in the promotion of a state-wide system of airports, may co-operate with and assist the political subdivisions of this state and others engaged in aeronautics, and may encourage and develop aeronautics; by establishing uniform regulations, consistent with federal regulations and those of other states, in order that those engaged in aeronautics of every character may so engage with the least possible restriction, consistent with the safety and the rights of others; and by providing for co-operation with the federal authorities in the development of a national system of civil aviation and for co-ordination of the aeronautical activities of those authorities and the authorities of this state by assisting in accomplishing the purposes of federal legislation and eliminating costly and unnecessary duplication of functions.

History: En. Sec. 3, Ch. 152, L. 1945.

Purchase of Aircraft

The powers of the state aeronautics commission include the power to purchase and maintain aircraft. Holtz v. Babcock, 143 M 341, 389 P 2d 869.

CHAPTER 2

STATE AERONAUTICS COMMISSION

Section 1-201. Creation of state aeronautics commission.
1-202. Organization—meetings—reports.
1-203. Office and expense—employees.
1-204. General powers and duties of commission.
1-205. Federal aid.

1-201. Creation of state aeronautics commission. (a) Composition. There is hereby created a commission to be known as the state aeronautics commission. Said commission shall consist of seven persons who shall be appointed by the governor within thirty days after the passage and approval of this act, and who shall serve without compensation except that they shall receive a per diem of $10.00 for each day actually expended in the performance of their duties under this act and shall be reimbursed for all actual and necessary traveling expenses, incurred by them in the discharge of their official duties, provided, however, that no member of the commission shall receive per diem allowance in excess of five hundred dollars ($500.00) annually. The governor shall appoint the members of said commission in the following manner: One shall be selected from the Montana Pilots' Association; one from Montanans, Incorporated; one from the Municipal League; one from the County Commissioners Association; one selected from among those actively engaged in aviation education in Mon-

tana; one to be selected by the governor as a representative of interstate commercial airline operators, who must at the time of appointment, be an employee, or official of such an operator, and whose residence must be within the state of Montana; and one to be selected by the governor, who is an active base operator in the state at the time of his appointment or an official of such base operator of flying services, or flying schools.

(b) The members of the said commission shall serve for a period of four years from date of their appointment and until their successors are appointed and qualified. Provided, however, that in making said appointments, the governor may shorten the term of two of said appointees to any period of time less than four years so that the terms of office of all seven members of the commission shall not expire in the same year. The members of the commission may be removed by the governor after notice and hearing for inefficiency, neglect of duty, or malfeasance in office.

History: En. Sec. 4, Ch. 152, L. 1945.

Collateral References

Aviation⇨31.
2 C.J.S. Aerial Navigation § 9.

1-202. Organization—meetings—reports. The commission shall, within thirty days after its appointment, organize, adopt a seal, and make such rules and regulations for its administration, not inconsistent herewith, as it may deem expedient and may from time to time amend such rules and regulations. At such organization meeting it shall elect from among its members a chairman, a vice-chairman and a secretary, to serve for one year, and annually thereafter shall select such officers; all to serve until their successors are appointed and qualified. It shall at its initial meeting fix the date and place for its regular meetings. Four members shall constitute a quorum, and no action shall be taken by less than a majority of the commission. Special meetings may be called as provided by its rules and regulations. All regular and special commission meetings shall be open to the public. It shall report in writing to the governor on or about December first, of each year. Said report shall contain a summary of its proceedings during the preceding fiscal year, a detailed and itemized statement of all revenue and of all expenditures made by or in behalf of the commission, such other information as it may deem necessary or useful, and any additional information which may be requested by the governor. The fiscal year of the commission shall conform to the fiscal year of the state.

History: En. Sec. 5, Ch. 152, L. 1945.

1-203. Office and expense—employees. Suitable offices and office equipment shall be provided by the state for the commission in the city of Helena, and it may maintain offices in any other city in the state that it may designate and may incur the necessary expense for office furniture, stationery, printing, incidental expenses, and other expenses necessary for the enforcement of this act and the general promotion of aeronautics within the state. Regular meetings shall be held at its offices at Helena, but, whenever the convenience of the public or of the parties may be promoted, or delay or expense may be prevented, it may hold hearings or proceedings at any other place designated by it. It may employ such clerical and

other employees and assistants as it may deem necessary for the proper transaction of its business and shall fix their salaries.

History: En. Sec. 6, Ch. 152, L. 1945.

1-204. General powers and duties of commission. (a) The commission shall have general supervision over aeronautics within this state. It is empowered and directed to encourage, foster, and assist in the development of aeronautics in this state and to encourage the establishment of airports and other air navigation facilities.

(b) Co-operation with federal government—It shall co-operate with and assist the federal government, the political subdivisions of this state, and others engaged in aeronautics or the promotion of aeronautics, and shall seek to co-ordinate the aeronautical activities of these bodies. To this end, the commission is empowered to confer with or to hold joint hearings with any federal aeronautical agency in connection with any matter arising under this act, or relating to the sound development of aeronautics, and to avail itself of the co-operation, services, records, and facilities of such federal agencies, as fully as may be practicable, in the administration and enforcement of this act. It shall reciprocate by furnishing to the federal agencies its co-operation, services, records and facilities, in so far as may be practicable.

It shall report to the appropriate federal agency all accidents in aeronautics in this state of which it is informed and preserve, protect and prevent the removal of the component parts of any aircraft involved in an accident being investigated by it until a federal agency institutes an investigation. It shall report to the appropriate federal agency all refusals by it to register federal licenses, certificates or permits and all revocations of certificates of registration, and the reasons therefor, and all penalties of which it has knowledge imposed upon airmen for violations of the laws of this state relating to aeronautics or for violations of the rules, regulations or orders of the commission.

(c) Rules, regulations and standards—It may perform such acts, issue and amend such orders and make, promulgate and amend such reasonable general or special rules, regulations and procedure, and establish such minimum standards, consistent with the provisions of this act, as it shall deem necessary to carry out the provisions of this act and to perform its duties hereunder; all commensurate with and for the purpose of protecting and ensuring the general public interest and safety, the safety of persons receiving instruction concerning, or operating, using or traveling in aircraft, and of persons and property on land or water, and to develop and promote aeronautics in this state. No rule or regulation of the commission shall apply to airports or other air navigation facilities owned or controlled by the federal government within this state

(d) Conformity to federal legislation and rules—All rules and regulations prescribed by the commission under the authority of this act shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics and the regulations duly promulgated thereunder and rules and standards issued from time to time pursuant thereto.

(e) Filing of rules—It shall keep on file at the principal office of the commission, a copy of all its rules and regulations, for public inspection.

(f) State airways system—It may designate, design and establish, expand, or modify a state airways system which will best serve the interests of the state. It may chart such airways system and arrange for publication and distribution of such maps and charts and notices and bulletins relating to such airways as may be required in the public interest. The system shall be supplementary to and co-ordinated in design and operation with the federal airways system. It may include all types of air navigation facilities, whether publicly or privately owned, provided that such facilities conform to federal safety standards.

(g) Technical services to municipalities—It may, in so far as is reasonably possible, offer the engineering or other technical services of the commission, without charge, to any municipality desiring them in connection with the construction, maintenance or operation or proposed construction, maintenance, or operation of an airport or restricted landing area.

(h) Legislation—It may draft and recommend necessary legislation to advance the interests of the state in aeronautics and represent the state in aeronautical matters before federal agencies and other state agencies.

(i) Intervention—It may participate as party plaintiff or defendant, or as intervener on behalf of the state or any municipality or citizen thereof in any controversy having to do with any claimed encroachment by the federal government or any foreign state upon any state or individual rights pertaining to aeronautics.

(j) Enforcement of aeronautics laws—It shall be the duty of the commission, its members and employees, and every state, county and municipal officer charged with the enforcement of state or municipal laws to enforce and assist in the enforcement of this act and of all rules and regulations issued pursuant thereto, and of all other laws of this state relating to aeronautics, and, in the aid of such enforcement, general police powers are hereby conferred upon the commission, each of its members, and such of the officers and employees of the commission as may be designated by it to exercise such powers. The commission is further authorized, in the name of the state, to enforce the provisions of this act and the rules and regulations issued pursuant thereto by injunction in the courts of this state. Municipalities are authorized to co-operate with the commission in the development of aeronautics and aeronautics facilities in this state. (The commission may use the facilities and services of other agencies of the state when reasonably available.)

(k) Investigations—The commission, any member thereof, or any officer or employee of the commission designated by it shall have the power to hold investigations, inquiries, and hearings concerning matters covered by the provisions of this act and orders, rules, and regulations of the commission, and concerning accidents in aeronautics within this state. All hearings so conducted shall be open to the public. Each commissioner and every officer or employee of the commission designated by it to hold any inquiry, investigations, or hearing shall have power to administer oaths and affirmations, certify to all official acts, issue subpoenas, and compel the

attendance and testimony of witnesses, and the production of papers, books, and documents. In case of failure to comply with any subpoenas or orders issued under authority of this act, the commission, or its authorized representative, may invoke the aid of any court of this state of general jurisdiction. The court may thereupon order the witness to comply with the requirements of the subpoena or order or to give evidence touching the matter in question. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(l) Reports of investigations—limitations on use—In order to facilitate the making of investigations by the commission, in the interest of public safety and promotion of aeronautics, the public interest requires, and it is, therefore provided that the reports of investigations or hearings, or any part thereof, shall not be admitted in evidence or used for any purpose in any suit, action or proceedings, growing out of any matter referred to in said investigation, hearing, or report thereof, except in case of criminal or other proceedings instituted in behalf of the commission or this state under the provisions of this act and other laws of this state relating to aeronautics, nor shall any commissioners, or any officer or employee of the commission be required to testify to any facts ascertained in, or information gained by reason of, his official capacity, or be required to testify as an expert witness in any suit, action, or proceeding involving any aircraft. Subject to the foregoing provisions, the commission may in its discretion make available to appropriate federal and state agencies information and material developed in the course of its hearings and investigations.

(m) Financial assistance to municipalities—The commission may render assistance in the acquisition, development, operation, or maintenance of airports owned, controlled or operated by municipalities in this state, out of appropriations made by the legislature for that purpose.

(n) Authority to contract—The commission may enter into any contracts necessary to the execution of the powers granted the commission by this act.

(o) No exclusive rights granted—The commissioner shall grant no exclusive right for the use of any airway, airport, restricted landing area, or other air navigation facility under its jurisdiction. This subdivision shall not prevent the making of leases in accordance with other provisions of this act.

History: En. Sec. 7, Ch. 152, L. 1945.

Expert Witness

An officer and employee of the state aeronautical commission may not be required to testify as an expert witness in any suit, action, or proceeding involving any aircraft. McCutcheon v. Larsen, 134 M 511, 333 P 2d 1013, 1015, 74 ALR 2d 622.

Purchase of Aircraft

The commission is empowered to purchase aircraft, the expense of which is to be paid out of the state aviation fund as an expense of administration. Holtz v. Babcock, 143 M 341, 389 P 2d 869.

Collateral References

Aviation⇐51.

2 C.J.S. Aerial Navigation § 9.

1-205. Federal aid. (a) Co-operation with government—The commission is authorized to co-operate with the government of the United States, and any agency or department thereof, in the acquisition, construction, improvement, maintenance and operation of airports and other air naviga-

tion facilities in this state, and to comply with the provisions of the laws of the United States and any regulations made thereunder for the expenditure of federal moneys upon such airports and other navigation facilities.

(b) Authority to receive federal moneys for state and municipalities—It is authorized to accept, receive, and receipt for federal moneys and other moneys either public or private, for and in behalf of this state, or any municipality thereof, for the acquisition, construction, improvement, maintenance and operation of airports and other air navigation facilities, whether such work is to be done by the state or by such municipalities, or jointly, aided by grants of aid from the United States, upon such terms and conditions as are or may be prescribed by the laws of the United States and any rules or regulations made thereunder, and it is authorized to act as agent of any municipality of this state upon the request of such municipality, in accepting, receiving, and receipting for such moneys in its behalf for airports or other air navigation facility purposes, and in contracting for the acquisition, construction, improvement, maintenance, or operation of airports or other air navigation facilities, financed either in whole or in part by federal moneys, and the governing body of any such municipality is authorized to designate the commission as its agent for such purposes and to enter into an agreement with it prescribing the terms and conditions of such agency in accordance with federal laws, rules, and regulations and with this act. Such moneys as are paid over by the United States government shall be retained by the state or paid over to said municipalities under such terms and conditions as may be imposed by the United States government in making such grants.

(c) Contracts—law governing—All contracts for the acquisition, construction, improvement, maintenance and operation of airports, or other air navigation facilities made by the commission, either as the agent of this state or as the agent of any municipality, shall be made pursuant to the laws of this state governing the making of like contracts by the state or by municipalities; provided, however, that, where the acquisition, construction, improvement, maintenance and operation of any airport, landing strip, or other air navigation facility is financed wholly or partially with federal moneys, the commission, as agent of the state or of any municipality thereof, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder, notwithstanding any other state law to the contrary.

(d) Disposition of federal funds—All moneys accepted for disbursement by the commission pursuant to subdivision [b] of this section shall be deposited in the state treasury, and, unless otherwise prescribed by the authority from which the money is received, kept in separate funds, designated according to the purposes for which the moneys were made available, and held by the state in trust for such purposes. All such moneys are hereby appropriated for the purposes for which the same were made available, to be expended in accordance with federal laws and regulations and with this act. The commission is authorized, whether acting for this state or as the agent of any of its municipalities, or when requested by the United States government or any agency or department thereof, to dis-

burse such moneys for the designated purposes, but this shall not preclude any other authorized method of disbursement.

History: En. Sec. 8, Ch. 152, L. 1945.

Compiler's Note

The bracketed reference "b" in subdivision (d) was inserted by the compiler.

CHAPTER 3

REGULATION AND LICENSES

Section 1-301. Regulation of aircraft, airmen, airports and air instruction.
1-302. Exhibition of licenses and certificates.
1-303. Air instruction without license or certificate unlawful.
1-304. Licensing of airports and other air navigation facilities.
1-305. Hearings on applications for certificates and licenses.
1-306. Standards for issuing certificates of approval and licenses.
1-307. Exceptions—personal use.
1-308. Revocation of certificate of approval and licenses.
1-309. Exceptions—federal government.
1-310. Orders of commission.
1-311. "Commercial air operator" defined.
1-312. "Aircraft" defined.
1-313. "Person" defined.
1-314. Commercial air operators to procure insurance.
1-315. Commission to set amount of insurance.
1-316. Submission of evidence of insurance to commission.
1-317. Copies of insurance policies to be filed with commission.
1-318. Continuation of insurance—notice to commission upon cancellation.
1-319. Commission to establish rules.
1-320. Violations of act.
1-321. Acceptance of policies by unauthorized insurers.
1-322. Certification and regulation of intrastate air carriers—definitions—operation of act—recognition of federal authority to regulate use or air space.
1-323. Regulatory powers of commission—rates—reports—rules—certificate of public convenience—suspension of certificates—discontinuance of operations—enforcement proceedings—violations and penalties—appeals—charter operators exempt.
1-324. Publication of notice.

1-301. Regulation of aircraft, airmen, airports and air instruction. In order to promote the general public interest and safety and to carry out the purposes of this act, the commission is authorized:

(a) To require the annual registration of federal licenses, permits or certificates of civil aircraft engaged in air navigation within this state, of airmen engaged in aeronautics within this state, and of aeronautics instructors giving instruction in flying subjects, and to issue certificates of such registration. Such certificates of registration shall constitute licenses of such aircraft, airmen and instructors for operations within this state to the extent permitted by the federal licenses, certificates or permits so registered. It may charge a fee for the registration of each federal license, certificate or permit not exceeding one dollar. It may accept as evidence of the holding of a federal license, certificate or permit the verified application of the owner of the aircraft, the airman or the instructor, which application shall contain such information as the commission may by rule, regulation, or order prescribe.

(b) To require the registration of aircraft repair shops, aircraft, aircraft parts and sales dealers and other persons operating in aviation. To

license aircraft repair shops, aircraft, aircraft parts and dealers and other persons operating in aviation, the operation of air schools and aeronautics instructors giving instruction in ground subjects in accordance with rules and regulations to be adopted by the commission and to annually renew such licenses. It may charge for the original licensing of aircraft repair shops, aircraft, aircraft parts and sales dealers and other persons operating in aviation, air schools and aeronautics instructors not more than one dollar ($1.00) and for the renewal of any such license not more than one dollar ($1.00).

(c) To approve airport and restricted landing area sites and to license airports, restricted landing areas, or other air navigation facilities, in accordance with rules and regulations to be adopted by the commission, (and to annually renew such licenses). (Licenses granted under this section or under any prior law shall be annually renewed upon payment of the fee therefor), and licenses shall be granted for airports and restricted landing areas which were being operated on or before the first day of April, 1945, without the requirement of a certificate of approval, unless the commission shall reasonably determine, after a public hearing to be called by it and held in the same manner and upon the same notice as is provided for hearings upon certificates of approval or original licenses, that the operation of such airport or restricted landing area is hazardous to persons operating, using or traveling in aircraft or to persons and property on the ground. It shall make no charge for approval certificates of proposed property acquisition for airport or restricted landing area purposes. It may charge for the issuance of each original license for an airport or restricted landing area not to exceed $1.00 (and, for each annual renewal of such license, not to exceed $1.00).

(d) To temporarily or permanently revoke any license or certificate of registration of an aircraft, airman, air school, or aeronautics instructor, issued by it, upon notification by the civil aeronautics authority that it has revoked the license or certificate of an aircraft, airman, air school, or aeronautics instructor, giving reasons for such action.

(e) Operations unlawful without license or certificate—Except as hereinafter provided, it shall be unlawful for any person to operate or cause or authorize to be operated any civil aircraft within this state unless such aircraft has an appropriate effective license, certificate or permit issued by the United States government which has been registered with the commission and such registration with the commission is in full force and effect, and it shall be unlawful for any person to engage in aeronautics as an airman in this state unless he has from the commission an effective certificate of registration of an appropriate effective airman's license, certificate or permit issued by the United States government authorizing him to engage in the particular class of aeronautics in which he is engaged.

(f) Exceptions to registration requirements—The provisions of paragraph (b) and paragraph (d) of this section shall not apply to:

(1) An aircraft which has been licensed by a foreign country with which the United States has a reciprocal agreement covering the operations of such licensed aircraft;

(2) An aircraft which is owned by a nonresident of this state who is lawfully entitled to operate such aircraft in the state of his residence;

(3) An aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce;

(4) An airman operating military or public aircraft, or any aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operation of such licensed aircraft;

(5) Persons operating model aircraft nor to any person piloting an aircraft which is equipped with fully functioning dual controls when a licensed instructor is in full charge of one set of said controls and such flight is solely for instruction or for the demonstration of said aircraft to a bona fide prospective purchaser;

(6) A nonresident operating aircraft in this state who is lawfully entitled to operate aircraft in the state of residence;

(7) An airman while operating or taking part in the operation of an aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce.

History: En. Sec. 9, Ch. 152, L. 1945.

Nature of Tax

This tax is a regulatory measure and the tax levied is a license tax. State ex rel. State Aeronautics Commission v. Board of Examiners, 121 M 402, 194 P 2d 633, 637.

Collateral References

Aviation⇐101, 121.
2 C.J.S. Aerial Navigation §§ 11, 16.

Aircraft operated wholly within state as subject to federal regulation. 9 ALR 2d 485.

Liability of operator of flight training school for injury or death of trainee. 17 ALR 2d 557.

Airport operator's remedies as to uses of adjoining land interfering with aircraft operation. 25 ALR 2d 1454.

Duty and liability to guest or passenger as to preflight inspection and maintenance of aircraft. 30 ALR 2d 1172.

Public regulation requiring mufflers or similar noise-preventing devices on aircraft. 49 ALR 2d 1202.

Public regulations as to duty of airplane owner or operator to furnish aircraft with navigational and flight safety devices. 50 ALR 2d 898.

Revocation or suspension of airman's license or certificate. 78 ALR 2d 1155.

Liability of air carrier to one injured or killed by slip or fall at airport. 3 ALR 3d 938.

1-302. Exhibition of licenses and certificates. The federal license, certificate, or permit, and the evidence of registration in this or another state, if any, required for an airman shall be kept in the personal possession of the airman when he is operating within this state and must be presented for inspection upon the demand of any passenger, or any peace officer of this state, any authorized member, official, or employee of the commission, or any official, manager or person in charge of any airport in this state upon which he shall land, or upon the reasonable request of any other person. The federal aircraft license, certificate or permit, and the evidence of registration in this or another state, if any, required for aircraft must be carried in every aircraft operating in this state at all times and must be conspicuously posted therein where it may readily be seen by passengers or inspectors and must be presented for inspection upon demand of any passenger, any peace officer of this state, any member, authorized official, or employee of the commission, or any official, manager, or person in charge of any airport in this state upon which it shall land, or upon the reasonable request of any person.

History: En. Sec. 10, Ch. 152, L. 1945.

1-303. Air instruction without license or certificate unlawful. It shall be unlawful for any person to operate an air school or to give instructions in flying or ground subjects in this state unless such person, if an air school or aeronautics instructor in ground subjects, is the holder of an annual license issued by the commission, or if an aeronautics instructor in flying subjects has an appropriate effective license, certificate, or permit issued by the United States government authorizing him to engage in the particular class of flight instruction in which he is engaged, which has been registered with the commission and such registration with the commission is in full force and effect.

History: En. Sec. 11, Ch. 152, L. 1945.

1-304. Licensing of airports and other air navigation facilities. All proposed airports, restricted landing areas, and other air navigation shall be first licensed by the commission before they, or any of them, shall be used or operated. Any municipality or person acquiring property for the purpose of constructing or establishing an airport or restricted landing area shall, prior to such acquisition, make application to the commission for a certificate of approval of the site selected and the general purpose or purposes for which the property is to be acquired, to ensure that the property and its use shall conform to minimum standards of safety and shall serve public interest. It shall be unlawful for any municipality or officer or employee thereof, or for any person, to operate an airport, restricted landing area, or other air navigation facility for which an annual license has not been issued by the commission.

History: En. Sec. 12, Ch. 152, L. 1945.

Collateral References

Aviation⇨213.

2 C.J.S. Aerial Navigation § 35.

1-305. Hearings on applications for certificates and licenses. Whenever the commission makes an order granting or denying a certificate of approval of an airport or a restricted landing area, or an original license to use or operate an airport, restricted landing area or other air navigation facility, and the applicant or any interested municipality, within fifteen days after notice of such order has been sent the applicant by registered mail, demands a public hearing, or whenever the commission desires to hold a public hearing before making such order, such a public hearing in relation thereto shall be held in the municipality applying for the certificate of approval or license, or in case the application was made by anyone other than a municipality, at the county seat of the county in which the proposed airport, restricted landing area or other air navigation facility is proposed to be situated, at which hearing parties in interest and other persons shall have an opportunity to be heard. Notice of the hearing shall be published by the commission in a legal newspaper of general circulation in the county in which the hearing is to be held, at least twice, the first publication to be at least fifteen days prior to the date of hearing. After a proper and timely demand has been made the order shall be stayed until after the hearing, when the commission may affirm, modify or reverse it, or make a new order. If no hearing is demanded as herein provided, the order shall become effective upon the expiration

of the time permitted for making a demand. Where a certificate of approval of an airport or restricted landing area has been issued by the commission, it may grant a license for operation and use, and no hearing may be demanded thereon.

History: En. Sec. 13, Ch. 152, L. 1945.

1-306. Standards for issuing certificates of approval and licenses. In determining whether it shall issue a certificate of approval or license for the use or operation of any proposed airport or restricted landing area, the commission shall take into consideration its proposed location, size and layout, the relationship of the proposed airport or restricted landing area to a comprehensive plan for state-wide and nation-wide development, whether there are safe areas available for expansion purposes, whether the adjoining area is free from obstructions based on a proper glide ratio, the nature of the terrain, the nature of the uses to which the proposed airport or restricted landing area will be put, and the possibilities for future development.

History: En. Sec. 14, Ch. 152, L. 1945.

1-307. Exceptions—personal use. The provisions of sections 1-304, 1-305 and 1-306 shall not apply to restricted landing areas designed for personal use.

History: En. Sec. 15, Ch. 152, L. 1945.

1-308. Revocation of certificate of approval and licenses. The commission is empowered to temporarily or permanently revoke any certificate of approval or license issued by it when it shall determine that an airport, restricted landing area, or other navigation facilities are not being maintained or used in accordance with the provisions of this act and the rules and regulations lawfully promulgated pursuant thereto.

History: En. Sec. 16, Ch. 152, L. 1945.

1-309. Exceptions—federal government. The provisions of sections 1-304 to 1-307, both inclusive, shall not apply to any airport, restricted landing area or other air navigation facility owner or operated by the federal government within this state.

History: En. Sec. 17, Ch. 152, L. 1945.

1-310. Orders of commission. In any case where the commission refuses to issue a certificate of approval of or license (or renewal of license) for an airport, restricted landing area or other air navigation facility, or refuses to permit the registration of any license, certificate or permit, or refuses to grant a license to an air school or to an aeronautics instructor in ground subjects, or in any case where it shall issue any order requiring certain things to be done, or revoking any license or certificate, it shall set forth its reasons therefor and shall state the requirements to be met before such approval will be given, registration permitted, license granted or order modified or changed. Any order made by the commission pursuant to the provisions of this act shall be served upon the interested persons by registered mail or in person. To carry out the provisions of this act the

commission, any member thereof, or any officer or employee of the commission, and any officers, state or municipal, charged with the duty of enforcing this act may inspect and examine at reasonable hours any premises, and the buildings and other structures thereon where airports, restricted landing areas, air schools, flying clubs or other air navigation facilities or aeronautical activities are operated or carried on.

(a) Any person aggrieved by an order of the commission, or by the granting or denial of any license, certificate or registration may have the action of the commission reviewed by a court of record of this state in the following manner:

Any person against whom an order has been entered by the state aeronautics commission may, within ten days after the service thereof, appeal from such order to the district court of the county in which such person resides or the county in which any property affected by the order is located. Such appeal shall be taken by filing with the clerk of the district court to which such appeal is taken a notice of appeal which shall state the substance of the order appealed from, the date thereof and that such person appeals to said court from the same, and by serving a copy of said notice of appeal upon either the chairman or vice-chairman and secretary of the commission. The order of filing and service is immaterial. Said appeal shall be set down for hearing in not less than ten days nor more than thirty days after the filing of said notice of appeal unless the judge shall, for sufficient cause resulting from press of business or other reason, be unable to hear said appeal within said time. In that event, said hearing may be deferred until the same can be heard by the court. Said appeal may be heard without formal pleadings.

History: En. Sec. 18, Ch. 152, L. 1945.

Compiler's Note

As enacted, this section contained no subsection or subdivision designated (b).

Collateral References

Aviation⇐34.
2 C.J.S. Aerial Navigation § 9.

1-311. "Commercial air operator" defined. As used in this article "commercial air operator" means any person owning, controlling, operating, or managing aircraft for any commercial purpose for compensation.

History: En. Sec. 1, Ch. 122, L. 1967.

1-312. "Aircraft" defined. As used in this article, "aircraft" means any contrivance used for navigation of, or flight in, the air.

History: En. Sec. 2, Ch. 122, L. 1967.

1-313. "Person" defined. As used in this article, "person" means any individual, firm, partnership, private, municipal or public corporation, company, association, joint stock association, trustee, receiver, assignee, or other similar representative.

History: En. Sec. 3, Ch. 122, L. 1967.

1-314. Commercial air operators to procure insurance. The state aeronautics commission shall require every commercial air operator to procure, and continue in effect so long as the commercial air operator continues to offer his services for compensation, adequate protection

against liability imposed by law upon a commercial air operator for the payment of damages for personal bodily injuries, including death resulting therefrom, and property damage as a result of an accident.

History: En. Sec. 4, Ch. 122, L. 1967.

Collateral References

Aviation⇨101.

2 C.J.S. Aerial Navigation § 8.

1-315. Commission to set amount of insurance. The commission shall, after a public hearing, set the amount of liability insurance, required by section 1-314, which is reasonably necessary to provide adequate compensation for damage incurred through an accident involving a commercial air operator.

History: En. Sec. 5, Ch. 122, L. 1967.

1-316. Submission of evidence of insurance to commission. The protection required under section 1-314 shall be evidenced either by the deposit with the commission, covering each aircraft used or to be used in commercial operations for compensation of:

(a) A copy of the policy of insurance, issued by a company authorized to write such insurance in the state; or

(b) A bond of a surety company authorized to write surety bonds in the state.

(c) Such evidence of the qualification of the commercial air operator as a self-insurer as may be authorized by the commission.

History: En. Sec. 6, Ch. 122, L. 1967.

1-317. Copies of insurance policies to be filed with commission. With the consent of the commission a copy of an insurance policy, certified by the company issuing it to be a true copy of the original policy, or a photostatic copy thereof, or an abstract of the provisions of the policy, or a certificate of insurance issued by the company issuing the policy, may be filed with the commission in lieu of the original or a duplicate or counterpart of the policy.

History: En. Sec. 7, Ch. 122, L. 1967.

1-318. Continuation of insurance—notice to commission upon cancellation. The protection against liability shall be continued in effect so long as the commercial air operator continues to offer his services for compensation. The policy of insurance or surety bond shall not be cancelable on less than thirty (30) days' written notice to the commission, except in the event of cessation of operations as a commercial air operator.

History: En. Sec. 8, Ch. 122, L. 1967.

1-319. Commission to establish rules. The commission may establish such rules as are necessary to enforce this article.

History: En. Sec. 9, Ch. 122, L. 1967.

1-320. Violations of act. Any commercial air operator who knowingly refuses or fails to procure protection against liability, as required by section 1-314, within six (6) months from the effective date of this article shall be guilty of a misdemeanor, and each day during which said com-

mercial air operator shall continue in such default shall constitute a separate offense.

History: En. Sec. 10, Ch. 122, L. 1967.

1-321. Acceptance of policies by unauthorized insurers. Notwithstanding the provisions of section 1-316, the commission shall have the authority to accept policies of insurance written by unauthorized insurers, provided that the policies of insurance shall meet the rules and regulations promulgated therefor by the commission.

History: En. Sec. 11, Ch. 122, L. 1967.

1-322. Certification and regulation of intrastate air carriers—definitions—operation of act—recognition of federal authority to regulate use of air space. (1) Unless the context otherwise requires, the definitions in chapter 1 of Title 1, R. C. M. 1947, shall govern the construction of this act.

(2) As used in this act, "air carrier" means a person or corporation owning, controlling, operating, or managing aircraft as a scheduled common carrier of passengers or freight for compensation within this state.

(3) As used in this act, "commission" means the state aeronautics commission.

(4) The provisions of this act do not apply to common carriers of passengers or freight by aircraft who operate within this state pursuant to the provisions of a current certificate of public convenience and necessity issued by the federal government.

(5) This state recognizes the authority of the federal government to regulate and control safety factors in the operation of aircraft and the use of air space.

History: En. Sec. 1, Ch. 171, L. 1967.

1-323. Regulatory powers of commission—rates—reports—rules—certificate of public convenience—suspension of certificates—discontinuance of operations—enforcement proceedings—violations and penalties—appeals—charter operators exempt. (1) No air carrier shall operate aircraft except in accordance with the provisions of this act.

(2) The commission may:

(a) Supervise and regulate every air carrier in those matters affecting ticketing, flight reservations, passenger baggage, advertising, passenger convenience and comfort, and transportation of freight.

(b) After notice to all interested parties and the public, and after hearing, fix the rates, fares, charges, classifications, and rules of each such carrier.

(c) Regulate the accounts of each such carrier, and require the filing of annual and other reports and of other data by such carriers.

(d) By general order or otherwise, prescribe rules applicable to any and all air carriers. The commission, in the exercise of the jurisdiction conferred upon it by this act, may make orders and prescribe rules affecting air carriers, notwithstanding the provisions of any ordinance or permit of any town, city, city and county, or county, and in case of conflict between any such order or rule and any such ordinance or permit, the order or rule of the commission shall prevail.

(3) No air carrier shall engage in any operation in this state without first having obtained from the commission a certificate of public convenience and necessity authorizing such operation.

(4) An applicant shall submit his written verified application to the commission. The application shall be in such form and contain such information and be accompanied by proof of service upon all air carriers with which the proposed service is likely to compete and such other interested parties as the commission requires.

In awarding certificates of public convenience and necessity pursuant to the foregoing subsection, the commission shall take into consideration, among other things, the business experience of the particular air carrier in the field of air operations, the financial stability of the carrier, the insurance coverage of the carrier, the type of aircraft which the carrier would employ, proposed routes and minimum schedules to be established, whether the carrier could economically give adequate service to the communities involved, the need for the service, and any other factors which may affect the public interest.

(5) Each application for a certificate of public convenience and necessity made under the provisions of this act shall be accompanied by a fee of one hundred fifty dollars ($150).

The commission may, after notice to the interested parties and the public, and after hearing, issue the certificate as prayed for. The commission may, after like notice and hearing, refuse to issue the certificate. The commission may, after like notice and hearing, issue the certificate for the partial exercise only of the privilege sought. The commission may attach to the exercise of the rights granted by the certificate such terms and conditions as, in its judgment, the public convenience and necessity require.

(6) A fee of one hundred fifty dollars ($150) shall be paid to the commission for filing each application to sell, mortgage, lease, assign, transfer, or otherwise encumber any certificate.

The commission may, after notice and hearing, approve the application or refuse to approve it, and may approve it under such terms and conditions as, in its judgment, the public convenience and necessity require.

(7) Notwithstanding any other provision in this act, the commission shall issue a certificate of public convenience and necessity to any air carrier actually operating in good faith and doing business as of January 1, 1967, without a hearing, if such carrier meets the conditions and requirements specified in this act, provided the application therefor shall have been filed with the commission on or before January 2, 1968. The commission may issue a temporary certificate of public convenience and necessity pending action on the application, and the air carrier may operate until its application is either granted or denied by the commission.

(8) Without the express approval of the commission, no certificate of public convenience and necessity issued to one air carrier under the provisions of this act shall be combined, united, or consolidated with another such certificate issued to or possessed by another such carrier, so as to permit through service between any point or points served by one carrier on the one hand, and any point or points served by another such carrier, on the other hand.

(9) Any one air carrier may, with written approval from the commission having been first obtained, and after notice to all interested parties and the public, and after hearing, establish through rates and joint rates, charges and classifications between any and all points served by it under any and all certificates or operative rights issued to or possessed by it.

(10) The commission may at any time suspend the certificate of any air carrier for failure to comply with the insurance regulations established pursuant to subsection 12 of this section. For any other good cause, the commission may at any time upon notice to the holder of any certificate an opportunity to be heard, suspend, revoke, alter or amend any such certificate.

(11) When a complaint has been filed with the commission alleging that any aircraft is being operated without a certificate of public convenience and necessity, as required by this act, or when the commission has reason to believe that this act is being violated, the commission shall investigate such operations and may, after a hearing, make its order requiring the operator of the aircraft to cease and desist from any operation in violation of this act. The commission shall enforce compliance with such order under the powers vested in the commission by law, including, but not limited to, the provisions of chapters 1 through 8 of Title 1 of R. C. M. 1947.

(12) The commission may, upon its motion, or upon application of any interested party, and after hearing, require any air carrier to procure and maintain insurance in such amounts and upon such terms as the commission may determine.

(13) The commission shall have the power to suspend and enforce the suspension of certificates of public convenience and necessity, issued by the commission, upon a finding of any agency of the federal government that an air carrier is operating in violation of any federal safety law or regulation.

(14) No air carrier shall discontinue operations to any point without authority of the commission, unless such operations are unprofitable. Unprofitable operations may be discontinued upon thirty (30) days' notice to the commission, and to such other persons as the commission may require, unless within such thirty-day period the commission, after hearing, makes a finding that such operation is not unprofitable and orders its continuance.

(15) The district court shall have jurisdiction to enforce, by proper decree, injunction or order, the rates, classifications, rulings, orders, and regulations made or established by the commission. The proceeding therefor shall be by equitable action in the name of the state, and shall be instituted by the attorney general or county attorney, whenever advised by the commission that any air carrier is violating or refusing to comply with any rule, order, rate, classification, or regulation made by the commission and applicable to such air carrier. Such proceedings shall have precedence over all other business in such courts, except criminal business.

In any action the burden of proof shall rest upon the defendant, who must show by clear and satisfactory evidence that the rule, order, regulation, rate, or classification involved is unreasonable and unjust as to them. If, in such action, it be the decision of the court that the rule, regu-

lation, order, rate, or classification is not unreasonable or unjust, and that in refusing compliance therewith the air carrier is thereby failing or omitting the performance of any duty, debt, or obligation, the court shall decree a mandatory and perpetual injunction compelling obedience to and compliance with the rule, regulation, order, rate or classification by the defendant, and its officers, agents, servants, and employees, and may grant such other relief as may be deemed just and proper. Any violation of such decree shall render the defendant and officer, agent, servant or servants, or employee of the defendant, who is in any manner instrumental in such violation, guilty of contempt, and shall be punishable by a fine not exceeding one thousand dollars ($1000) for each offense, or by imprisonment of the person guilty of contempt until he shall sufficiently purge himself therefrom, and such decree shall continue and remain in effect and be in force until the rule, regulation, order, rate, or classification shall be modified or vacated by the commission. An appeal shall lie to the supreme court from the decree in such action, and the cause shall have precedence over all other civil actions of a different nature pending in the supreme court.

(16) Any air carrier may bring an action in the district court of the county where the principal office or place of business is situated, or in any county where any such classification, rate, toll, charge, regulation, or order of the commission is applicable, against the said commission as defendant, to determine whether or not any such classification, rate, toll, charge, regulation, or order made, fixed, or established by the commission under the provisions of this act is just and reasonable; provided, that until the final decision in any such action the classification, rate, toll, charge, regulation, or order of the commission affecting rates or charges shall be deemed to be final and conclusive; and provided further, that in any action, hearing, or proceeding in any court, the classification, rate, tolls, charges, regulations, and orders made, fixed, and established by said commission shall prima facie be deemed to be just, reasonable, and proper. All costs and expenses incurred in the hearing, trial, or appeal of any action brought under this section shall be fixed and assessed as to the court may seem just and equitable.

(17) Appeals may be taken to the supreme court from the judgment of any district court in any action brought under the provisions of this act; such appeals shall have precedence over all other business, except criminal business and original proceedings in such court, and shall be heard and determined as are appeals in civil actions.

(18) Those aircraft operators who carry passengers for hire that are commonly known as taxi or charter operators who operate on an occasional or contract basis and do not operate as common carriers between terminal points, including intermediate points, if any, are excluded from the provisions of this act.

History: En. Sec. 2, Ch. 171, L. 1967.

Collateral References

Aviation⇐102.

2 C.J.S. Aerial Navigation § 8.

1-324. Publication of notice. Notice as required by section 1-323 shall be given by publication once a week for three (3) successive weeks in

a newspaper of general circulation in the county in which the hearing is to be held.

History: En. Sec. 3, Ch. 171, L. 1967.

CHAPTER 4

STATE AIRPORTS

Section 1-401. Acquisition and operation of state airports.

1-401. Acquisition and operation of state airports. (a) Authority to establish state airports—The commission is authorized and empowered, on behalf of and in the name of this state, within the limitation of available appropriations, to acquire by purchase, gift, devise, lease, condemnation proceedings, or otherwise, property real or personal, for the purpose of establishing and constructing airports, restricted landing areas, and other air navigation facilities, and to acquire in like manner, own, control, establish, construct, enlarge, improve, maintain, equip, operate, regulate, and police such airports, restricted landing areas, and other air navigation facilities either within or without this state; to make, prior to any such acquisition, investigations, surveys, and plans; to erect, install, construct, and maintain at such airports facilities for the servicing of aircraft and for the comfort and accommodation of air travelers, and to dispose of any such property, airport, restricted landing area, or any other air navigation facility, by sale, lease, or otherwise, in accordance with the laws of this state governing the disposition of other like property of the state. It may not, however, acquire, or take over any airport, restricted landing area or other air navigation facility owned or controlled by a municipality of this state without the consent of such municipality. It may erect, equip, operate, and maintain on any airport buildings and equipment necessary and proper to establish, maintain, and conduct such airport and air navigation facilities connected therewith.

(b) Airport protective privileges—Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports and restricted landing areas acquired or operated under the provisions of this act, it is hereby granted authority to acquire, in the same manner as is provided for the acquisition of property for airport purposes, easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of the airports or restricted landing areas, and such other airport protection privileges as are necessary to ensure safe approaches to the landing areas of said airports and restricted landing areas, and the safe and efficient operation thereof. It is also hereby authorized to acquire, in the same manner, the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime marking of airport hazards, including the right of ingress and egress to or from such airport hazards for the purpose of maintaining and repairing such lights and marks. This authority shall not be construed as to limit the right, power, or authority of the state or any municipality to zone property adjacent to any airport or restricted landing area pursuant to any law of this state.

(c) Joint operations—It may engage in all such activities jointly with the United States, other states, and with municipalities or other agencies of this state.

(d) Condemnation—It may exercise the right of eminent domain, in the name of the state, in the manner provided by the laws of this state for the acquisition of real property for public purposes, for the purpose of acquiring any property which it is herein authorized to acquire. The acquisition of such property for any of said purposes is hereby declared to be a public use.

(e) Leases and sales—It may lease for a term not exceeding ten years, airports, or other air navigation facilities or real property acquired or set apart for airport purposes, to private parties, any municipal or state government or the national government, or any department of either thereof, for operation; and may lease or assign for a term not exceeding ten years to private parties, any municipal or state government or the national government, or any department of either for operation or use consistent with the purposes of this act, space, area, improvements, or equipment on such airports; may sell any part of such airports, other air navigation facilities or real property to any municipal or state government, or to the United States or any department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto; and may confer the privilege of concessions of supplying upon the airports goods, commodities, things, services and facilities; provided that in each case in so doing the public is not deprived of its rightful, equal and uniform use thereof.

(f) Charges and rentals—It shall have the authority to determine the charges or rental for the use of any state airports and the charges for any service or accommodations, under its control and the terms and conditions under which such properties may be used; provided that in all cases the public is not deprived of its rightful, equal, and uniform use of such property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expenses of operation to the state. The state shall have and the commission may enforce agisters' liens, as provided by law for repairs to or improvement or storage or care of any personal property, to enforce the payment of any such charges.

History: En. Sec. 19, Ch. 152, L. 1945.

Collateral References

Aviation⇐211, 226.
2 C.J.S. Aerial Navigation § 35.

CHAPTER 5

MISCELLANEOUS

Section 1-501. Receipt and disbursement of moneys.
1-502. Aeronautics functions governmental—no liability for torts.
1-503. Penalties.
1-504. Repealing clause—scope of act.

1-501. Receipt and disbursement of moneys. All costs and expenses of administering this act, including the salaries of employees and assistants provided for in section 1-203, the expenses of members of the commission, and all other disbursements necessary to carry out the purposes

of this act, shall be paid out of the following revenues to wit: All gifts and all legislative appropriations to the commission; all moneys received from any branch or department of the federal government, or from other sources, for the purposes mentioned in this act or for the furtherance of aeronautics generally in this state. All such moneys shall be deposited in the state treasury to the credit of the commission.

There shall be deposited in the earmarked revenue fund to the credit of the commission the proceeds of one cent (1¢) per gallon out of the amount per gallon of gasoline license tax now or hereafter imposed by the laws of Montana upon purchases of gasoline used for the operation of aircraft.

No part of said one cent (1¢) per gallon of gasoline license tax imposed by the laws of Montana on gasoline purchased and used for the operation of aeroplanes or aircraft, shall be subject to refund under the provisions of section 84-1818, as amended, it being the intent of this section to reduce by one cent (1¢) per gallon of the amount of gasoline license tax which may be refunded on purchases of gasoline used in the operation of aircraft, and to leave otherwise unchanged the provisions of said section 84-1818.

History: En. Sec. 20, Ch. 152, L. 1945; amd. Sec. 1, Ch. 120, L. 1949; amd. Sec. 220, Ch. 147, L. 1963.

Constitutionality

Section 10, article XII of the state constitution has no application to the license tax provided for in this act and therefore it is not necessary that the proceeds of the one cent gasoline tax be paid into the state treasury as part of the general fund but it was competent for the legislature to provide that it be kept as a separate fund. State ex rel. State Aeronautics Commission v. Board of Examiners, 121 M 402, 194 P 2d 633, 638.

Appropriation

The appropriation made by Laws 1947, p. 761 from the gasoline drawback fund was an appropriation of the one cent gasoline tax for payment of the expenses of the commission. State ex rel. State Aeronautics Commission v. Board of Examiners, 121 M 402, 194 P 2d 633, 640.

Federal funds and other moneys derived otherwise than by taxation never reach the general fund of the state treasury and hence require no legislative appropriation other than that made by subd. (d) of section 1-205. State ex rel. State Aeronautics Commission v. Board of Examiners, 121 M 402, 194 P 2d 633, 636.

Purchase of Aircraft

The commission is empowered to purchase aircraft, the expense of which is to be paid out of the aviation fund as an expense of administration. Holtz v. Babcock, 143 M 341, 389 P 2d 869.

Purpose of Act

The practical operation of this act is to levy a one cent per gallon tax on the user of gasoline for aviation purposes and it is used to regulate the aviation operators, and therefore is not a revenue measure and not subject to the constitutional provisions relating to taxation. State ex rel. State Aeronautics Commission v. Board of Examiners, 121 M 402, 194 P 2d 633, 637, explained in 122 M 91, 103, 199 P 2d 971.

Refund of Gasoline Tax

The amendment of section 84-1818 by Laws 1947, ch. 130 had no effect on this section. State ex rel. State Aeronautics Commission v. Board of Examiners, 121 M 402, 194 P 2d 633, 641.

Collateral References

States⇐126, 127.
81 C.J.S. States § 158.

1-502. Aeronautics functions governmental—no liability for torts. The acquisition of any lands for the purpose of establishing airports or other air navigation facilities; the acquisition of any airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment and operation of airports and other air navigation facilities whether by the state separately or jointly with any municipality or municipalities thereof; the assistance of this state in any such acquisition,

establishment, construction, enlargement, improvement, maintenance, equipment, and operation; and the exercise of any other powers herein granted to the commission are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity, and such lands and other property and privileges acquired and used by the state in the manner and for the purposes enumerated in this act shall and are hereby declared to be acquired and used for public and governmental purposes and as a matter of public necessity.

No action or suit sounding in tort shall be brought or maintained against the state or any municipality thereof, or the officers, agents, servants, or employees of the state or any municipality thereof, on account of any act done in or about the construction, maintenance, enlargement, operation, superintendence or management of any airport or other air navigation facility.

History: En. Sec. 21, Ch. 152, L. 1945.

Airport Manager as Agent of Municipality

Where city and county leased hangar facilities and designated one of two lessees as airport manager, and the lessees were obligated to maintain only the portion of the airport leased to them, the city and county having retained control over the unleased portions, the airport manager was the agent of the city and county and was not liable for an accident occurring on unleased portion. Barovich v. City of Miles City, 135 M 394, 340 P 2d 819.

Immunity from Suit

A municipality is immune from suit for injuries resulting from the maintenance or operation of an airport. Barovich v. City of Miles City, 135 M 394, 340 P 2d 819; Holland v. Western Airlines, Inc., 154 F Supp 457, 459.

Liability Insurance

The fact that the city had obtained a policy of liability insurance did not in itself result in any waiver of sovereign immunity from liability for personal injuries sustained by plaintiff when she slipped and fell on floor of municipal airport owned by the city and leased to defendant airline. Holland v. Western Airlines, Inc., 154 F Supp 457, 461.

References

Holtz v. Babcock, 143 M 341, 389 P 2d 869.

Collateral References

Aviation⇨232.

2 C.J.S. Aerial Navigation §§ 21, 22.

1-503. Penalties. Any person violating any of the provisions of this act, or any of the rules, regulations or orders issued pursuant thereto, shall be guilty of a misdemeanor and punishable by a fine of not more than $500.00 or by imprisonment in a county jail for not more than ninety days or both.

History: En. Sec. 22, Ch. 152, L. 1945.

1-504. Repealing clause—scope of act. All acts and parts of acts in conflict herewith are hereby repealed. In case of any conflict or duplication of authority between the provisions of this act and any other law of the state of Montana, pertaining to the regulation, licensing or supervision of carriers of freight or passengers by air the provisions of this act shall control, it being the intent of this act to vest in the state aeronautics commission hereby created, the sole authority to regulate, license and control the aviation industry and all carriage by air.

History: En. Sec. 24, Ch. 152, L. 1945.

CHAPTER 6

UNIFORM STATE LAW FOR AERONAUTICS

Section 1-601. Sovereignty in space.
1-602. Ownership of space.
1-603. Lawfulness of flight—landings—recovery of damages.
1-604. Penalties.
1-605. Interpretation.
1-606. Short title.

1-601. (2736.5) **Sovereignty in space.** Sovereignty in the space above the lands and waters of this state is declared to rest in the state, except where assumed by the United States law.

History: En. Sec. 5, Ch. 17, L. 1929.

NOTES.—Uniform state law. Sections 1-601, 1-602, 1-603, 1-605, 1-606 are similar to sections 2, 3, 4, 11 and 12, respectively, of the "Uniform Aeronautics Act" approved by the National Conference of Commissioners on Uniform State Laws in 1922 and adopted in the states of Arizona, Delaware, Georgia, Hawaii, Idaho, Indiana, Maryland, Michigan, Minnesota, Missouri, Nevada, New Jersey, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, and Wisconsin.

This act was withdrawn from the active list of acts recommended for adoption by the National Conference of Commissioners on State Laws in August, 1943. See Handbook of the National Conference, 1943, p. 66.

Collateral References

Aviation⇐3.
2 C.J.S. Aerial Navigation § 3.

1-602. (2736.6) **Ownership of space.** The ownership of the space above the lands and waters of this state is declared to be vested in the several owners of the surface beneath, subject to the right of flight described in section 1-603.

History: En. Sec. 6, Ch. 17, L. 1929.

1-603. (2736.7) **Lawfulness of flight—landings—recovery of damages.** Flight in aircraft over the lands and waters of this state is lawful, unless at such a low altitude as to interfere with the then existing use to which the land or water, or the space over the land or water, is put by the owner, or unless so conducted as to be imminently dangerous to persons or property lawfully on the land or water, or in violation of the air commerce regulations which have been, or may hereafter be, promulgated by the department of commerce of the United States. No person shall operate an aircraft, as pilot thereof, either in the air or on the ground in a careless or reckless manner so as to endanger the life or property of others, including the aircraft being operated and passengers carried therein. The willful and malicious use of aircraft in stunting or diving over livestock in a manner calculated to frighten or stampede them, shall be deemed an unlawful use thereof, and actual and punitive damages, in addition to the penalties, provided by this act, may be recovered in an action for damages caused therefrom.

The landing of an aircraft on the lands or waters of another, without his consent, is unlawful, except in the case of a forced landing. For damages caused by a forced landing, however, the owner or lessee of the aircraft or the pilot shall be liable for actual damage caused by such forced landing.

History: En. Sec. 7, Ch. 17, L. 1929; amd. Sec. 1, Ch. 109, L. 1939; amd. Sec. 1, Ch. 16, L. 1949; amd. Sec. 1, Ch. 102, L. 1963.

Collateral References
Aviation⇐4.

2 C.J.S. Aerial Navigation §§ 5, 20.
8 Am. Jur. 2d 671, Aviation, § 52 et seq.

1-604. (2736.8) **Penalties.** A person who violates any provision of this act shall be guilty of a misdemeanor and punishable by a fine of not more than $500.00 or by imprisonment for not more than six months, or both.

History: En. Sec. 8, Ch. 17, L. 1929.

Collateral References
Commerce⇐63.
15 C.J.S. Commerce §§ 111-113.

1-605. (2736.9) **Interpretation.** This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it and to harmonize, as far as possible, with federal laws and regulations on the subject of aeronautics.

History: En. Sec. 9, Ch. 17, L. 1929.

1-606. (2736.10) **Short title.** This act may be cited as the Uniform State Law for Aeronautics.

History: En. Sec. 10, Ch. 17, L. 1929.

CHAPTER 7

REGULATION OF DANGEROUS OBSTRUCTIONS NEAR AIRPORTS—AIRPORT ZONING ACT

Section 1-701. Eliminating dangerous obstructions near airports.
1-702. Considerations affecting safety.
1-703. Enforcement of act.
1-704. Permits for erection of structures.
1-705. Existing structures—regulation.
1-706. Definition of terms—perimeter of airport.
1-707. Emergency landing strips excepted.
1-708. Restriction as to lights.
1-709. Penalty for violation of act.
1-710. Definitions.
1-711. Airport hazards contrary to public interest.
1-712. Power to adopt airport zoning regulations.
1-713. Relation to comprehensive zoning regulations.
1-714. Procedure for adoption of zoning regulations.
1-715. Airport zoning requirements.
1-716. Permits and variances.
1-717. Administration of airport zoning regulations.
1-718. Board of adjustment—appeals—judicial review.
1-719. Constitutional limitation.
1-720. Enforcement and remedies.
1-721. Acquisition of air rights.
1-722. Severability.
1-723. Short title.

1-701. Eliminating dangerous obstructions near airports. That for the purpose of ensuring and securing safety from death or bodily harm and injury for aeronauts and passengers and to protect the property of those engaged in aeronautics and to encourage and promote air travel and transportation of mail, passengers, express and freight by air, it is deemed necessary to eliminate dangerous obstructions of air space in the vicinity of airports or landing fields which may now be or which may hereafter be acquired, owned, operated or controlled or maintained by the United States, the state of Montana, any county of the state of Montana or any munici-

pality thereof; and to promote the public order, health and safety by providing unobstructed air space for the safe descent, landing, ascent and operation of aircraft while using or utilizing the said public airports in the state of Montana, the height of buildings and other structures in the vicinity of the airports and landing fields in the state of Montana owned, leased, operated, maintained or controlled by any of the public authorities aforesaid, regulated and restricted as hereafter set forth and provided.

History: En. Sec. 1, Ch. 12, L. 1939.

Collateral References

Aviation⇐231.

2 C.J.S. Aerial Navigation § 35.

Generally, see 8 Am. Jur. 2d 668, 669, Aviation, §§ 49, 50.

Use of land adjoining an airport interfering with aircraft operation as a nuisance. 25 ALR 2d 1454.

Liability of owner of wires, poles, or structures struck by airplane for resulting injury or damage. 48 ALR 2d 1462.

1-702. Considerations affecting safety. For the purposes set forth in section 1-707 and considering among other things:

(a) Requirements and facilities necessary to secure the safe descent, landing, ascent and operation of aircraft using or utilizing the public airports and landing fields aforesaid in the state of Montana;

(b) Hazard from the obstruction of air space in the vicinity of such airports and landing fields;

(c) The relation of the height of buildings and other structures in the vicinity of such airports and landing fields to such hazards;

(d) The area within which height of buildings and other structures may dangerously obstruct air space in the vicinity of public airports and landing fields;

(e) The height of buildings or other structures within such area, which is consistent with the safe use of such airports and landing fields; and

(f) The maintenance and use of obstruction markers and/or lights upon buildings and other structures within the said areas, as safety devices.

The height of buildings and/or other structures is hereby regulated and restricted within a distance of two (2) miles from any such public airport or landing field, measured at a right angle from any side or in a radial line from any corner of the established boundary line thereof, in any and all directions, as follows:

(1) Approach zone: The trapezoidal portion of the total two-mile zone area, 500 feet in width at the boundary of the field or airport, and broadening to a width of 2500 feet two miles distant, the center line of which shall be a continuation of the center line of each runway at and upon such public airports and landing fields, known as the approach zone, shall have no building, or other structure, natural feature or object of any kind therein, the height of which is more than one-twentieth its distance from the nearest boundary of the airport or landing field.

(2) Turning zone: The remaining portion of the two-mile zone area surrounding such public airports and landing fields aforesaid, lying between the approach zones aforesaid, and known as turning zones, shall have no building or other structure, natural feature or object of any kind therein, the height of which is more than one-seventh its distance from the nearest boundary of the airport or landing field.

In measuring distances and heights to determine the zone standard, measurements shall be taken from the nearest side of the building or structure or other object, to the nearest side of the airport or landing field aforesaid, and in the event of airports having boundaries not regular, the nearest established perimeter of such port and field shall be used, as distinguished from actual boundary.

History: En. Sec. 2, Ch. 12, L. 1939.

1-703. Enforcement of act. It shall be the duty and authority of every public body or governmental authority owning, operating or maintaining a public airport or landing field, to enforce the provisions of this act as pertains to areas surrounding the particular airport under the control of such body, the same to be enforced in either the court of law or of equity in the state of Montana having jurisdiction of such action, cases to be instituted in the name of the governmental body charged hereunder with the enforcement hereof, and such action may be to prevent the erection, construction or maintenance of such buildings or other structures or parts of buildings or structures, as may exceed the height limits heretofore fixed by this law, or to restrain, correct or abate any such violation, and to prevent the occupancy and use of any part of a building or structure erected in violation of this law.

History: En. Sec. 3, Ch. 12, L. 1939.

1-704. Permits for erection of structures. It is hereby made the duty of every person, firm or corporation in this state, proposing to erect, establish or maintain any building or other structure, or to grow any natural object that would exceed the height limit established by law when grown, to proceed to erect, establish or maintain such structure, or plant said natural object, without first making application to the proper officer of the United States, the state of Montana, any county or any municipality (where the proposed erection or action is within two miles of a public airport or landing field as herein set forth), whichever of said bodies has control of the airport or landing field affecting the area, and obtaining from the proper authority a permit for the erection, establishment and maintenance of the structure, building or object proposed; and, no permit shall be granted unless the specifications of the building or other structure or object reveal that the total height shall not exceed the height limits fixed by law for the zone in which the same is to be established; and no permit shall be issued in violation hereof, and any erection or maintenance without a permit which is in violation hereof, shall be ineffectual in law or equity, and shall be and remain a nullity so far as this act is concerned, and the enforcement remedies hereunder.

History: En. Sec. 4, Ch. 12, L. 1939.

1-705. Existing structures—regulation. With respect to any building or other structure existing at the time of the passage of this act, and which does not conform to the regulations of this act in the manner of height, the governmental authority affected thereby, whether the United States, the state of Montana, the several counties, or the several municipalities, in their own right and name, to protect their own airports and

landing fields, and to carry out the purposes and provisions of this act, shall have and they are hereby given the right and authority to acquire by purchase, grant, or by condemnation, such estate or interest in any such building or structure or other object, whether natural object or not, and/or in the lands upon which situated, as is necessary to vest full and absolute ownership and control in perpetuity of the space above such land to the extent necessary to correct or abate the height of any such nonconforming building or other structure or object to meet the requirements of this act as to height limitation, within the zones designated.

History: En. Sec. 5, Ch. 12, L. 1939.

1-706. Definition of terms—perimeter of airport. Certain words in this act are defined for the purposes of the act as follows, unless the contrary clearly appears from the context, viz.:

(a) Airport and landing field: These terms apply to any area of land, water, or both, which is used or is made available for the landing and take-off of aircraft, owned, leased, controlled, operated or maintained by the United States, the state of Montana, any county thereof, or any municipality, or any of the authorized agencies or branches thereof, within the state of Montana.

(b) Height of buildings and structures: The height of a building or structure for the purposes of this act is the vertical distance measured from the ground or surface level of the airport or landing field, on the side adjacent to the said building or structure to the level of the highest point of the building or structure.

(c) Buildings or structure: Any edifice, structure or construction of any kind, character or description, and any object of natural growth, erected, constructed, grown, located or proposed to be erected, constructed, grown or located within the area described in section 1-702 hereof as safety zones, including any edifice, structure, or construction or object within said restricted zones, erected, constructed, placed or located on or over land and/or water.

(d) The established perimeter of an airport or landing field, for the purposes of computing all distances and elevations as contemplated by this act, shall be the metes and bounds and elevations along the respective sides thereof as determined by the United States government, the state of Montana, the several counties, the several municipalities, or other public authority owning, leasing, controlling, operating or maintaining such airport or landing field, the determination and definition to be evidenced by plat showing the metes, bounds and elevations to be filed in and among the records of said public authority for official purposes, and subject to inspection and examination at all reasonable times by any interested persons.

History: En. Sec. 6, Ch. 12, L. 1939.

Collateral References

8 Am. Jur. 2d 618, Aviation, § 2.

1-707. Emergency landing strips excepted. This act shall not apply to any landing fields or strips now established or hereafter established by the civil aeronautics authority of the United States government, known as "Emergency Landing Strips," which do not provide at least 1800 feet of

landing area in all directions and which do not provide facilities for the housing, supply and servicing of aircraft.

History: En. Sec. 7, Ch. 12, L. 1939.

1-708. Restriction as to lights. No searchlight, beacon light, or other glaring light shall be used, maintained, or operated within said Montana airport zoning areas, so that the same shall reflect, glare, or shine upon or in the direction of the airports.

History: En. Sec. 8, Ch. 12, L. 1939.

1-709. Penalty for violation of act. Any person or firm or corporation violating any of the provisions of this law shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than $500.00 or by imprisonment for a period of not more than six (6) months, or by both such fine and imprisonment. Each such person, firm or corporation shall be deemed guilty of a separate offense for every day during any portion of which any violation of this law is committed, continued or permitted by such person, firm or corporation, and shall be punishable as provided by such law.

History: En. Sec. 12, Ch. 12, L. 1939.

1-710. Definitions. As used in this act, unless the context otherwise requires:

(1) "Airport" means any area, of land or water, except a restricted landing area, which is designed for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights of way, whether heretofore or hereafter established.

(2) "Airport hazard" means any structure, object of natural growth, or use of land, which obstructs the air space required for the flight of aircraft in landing or taking-off at any airport or restricted landing area or is otherwise hazardous to such landing or taking-off.

(3) "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this act.

(4) "Political subdivision" means any municipality, city, town, village, or county of this state and any other political subdivision, public corporation, authority, or district in this state which is or may be authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities.

(5) "Person" means any individual, firm, copartnership, corporation, company, association, joint stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

(6) "Structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.

(7) "Tree" means any object of natural growth.

History: En. Sec. 1, Ch. 287, L. 1947.

1-711. Airport hazards contrary to public interest. It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking-off and maneuvering of aircraft thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared: (a) that the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question; (b) that it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented; and (c) that this should be accomplished, to the extent legally possible, by exercise of the police power, without compensation. It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land or property interests therein.

History: En. Sec. 2, Ch. 287, L. 1947.

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1-712. Power to adopt airport zoning regulations. (1) In order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard area within its territorial limits may adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations for such airport hazard area, which regulations may divide such area into zones, and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures and trees may be erected or allowed to grow.

(2) Where an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to such airport is located outside the territorial limits of said political subdivision, within or without the state the political subdivision owning or contolling the airport and the political subdivision within which the airport hazard area is located may, by ordinance or resolution duly adopted, create a joint airport zoning board, which board shall have the same power to adopt, administer and enforce airport zoning regulations applicable to the airport hazard area in question as that vested by subsection (1) in the political subdivision within which such area is located. Each such joint board shall have as members two (2) representatives appointed by each political subdivision participating in its creation and in addition a chairman elected by a majority of the members so appointed.

(3) If in the judgment of a political subdivision owning or controlling an airport, the political subdivision within which is located an airport hazard area appertaining to that airport, has failed to adopt or enforce reasonably adequate airport zoning regulations for such area under subsection (1) and if that political subdivision has refused to join in creating a joint airport zoning board as authorized in subsection (2), the political subdivision owning or controlling the airport may itself adopt, administer, and enforce airport zoning regulations for the airport hazard area in

question. In the event of conflict between such regulations and any airport zoning regulations adopted by the political subdivision within which the airport hazard area is located, the regulations of the political subdivision owning or controlling the airport shall govern and prevail.

History: En. Sec. 3, Ch. 287, L. 1947.

1-713. Relation to comprehensive zoning regulations. (1) Incorporation. In the event that a political subdivision had adopted, or hereafter adopts, a comprehensive zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations applicable to the same area or portion thereof, may be incorporated in and made a part of such comprehensive zoning regulations, and be administered and enforced in connection therewith.

(2) Conflict. In the event of conflict between any airport zoning regulations adopted under this act and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, and whether such other regulations were adopted by the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.

History: En. Sec. 4, Ch. 287, L. 1947.

62 C.J.S. Municipal Corporations § 226 (1).

Collateral References

Municipal Corporations⇐601 (1).

1-714. Procedure for adoption of zoning regulations. (1) Notice and hearing. In adopting, amending, and repealing airport zoning regulations under this act, the political subdivision or joint airport zoning board shall follow the procedure prescribed by the laws of this state for the adoption, amendment, the repeal of comprehensive zoning regulations, as provided in sections 11-2701 to 11-2709.

(2) Airport zoning commission. Prior to the initial zoning of any airport hazard area under this act, the political subdivision or joint airport zoning board which is to adopt the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the legislative body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take other action until it has received the final report of such commission. Where a city planning commission or comprehensive zoning commission already exits, it may be appointed as the airport zoning commission.

History: En. Sec. 5, Ch. 287, L. 1947.

1-715. Airport zoning requirements. (1) Reasonableness. All airport zoning regulations adopted under this act shall be reasonable and none shall impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of this act. In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations

expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable.

(2) Nonconforming uses. No airport zoning regulations adopted under this act shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in section 1-716 (3).

History: En. Sec. 6, Ch. 287, L. 1947.

1-716. Permits and variances. (1) Permits. When advisable to facilitate the enforcement of this act, a system may be established for granting permits to establish or construct new structures and other uses. In any event, before any nonconforming structure may be replaced with a taller one or any nonconforming tree allowed to grow higher or be replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement or change. No such permit shall be granted that would allow the structure to become a greater hazard to air navigation than it was when the applicable regulation was adopted; and whenever the administrative agency determines that nonconforming structure or tree has been abandoned or more than eighty per cent (80%) torn down, destroyed, deteriorated, or decayed, no permit shall be granted that would allow said structure or trees to exceed the applicable height limit or otherwise deviate from the zoning regulations. Except as indicated, all applications for permits for replacement, change or repair of nonconforming uses shall be granted.

(2) Variances. Any person desiring to erect any structure, or increase the height of any structure, or permit the growth of any tree, or otherwise use his property in violation of airport zoning regulations adopted under this act, may apply to the board of adjustment for a variance from the zoning regulations in question. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations and this act; provided, that any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this act.

(3) Hazard marking and lighting. In granting any permit or variance under this section, the administrative agency or board of adjustment may, if it deems such action advisable to effectuate the purposes of this act and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

History: En. Sec. 7, Ch. 287, L. 1947. 62 C.J.S. Municipal Corporations § 227 (10).

Collateral References

Municipal Corporations⇐621.

1-717. Administration of airport zoning regulations. All airport zoning regulations adopted under this act shall provide for the administration and enforcement of such regulations by an administrative agency which may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision, but in no case shall such administrative agency be or include any member of the board of adjustment. The duties of any administrative agency designated pursuant to this act shall include that of hearing and deciding all permits under section 1-716 (1), but such agency shall not have or exercise any of the powers herein delegated to the board of adjustment.

History: En. Sec. 8, Ch. 287, L. 1947.

1-718. Board of adjustment — appeals — judicial review. All airport zoning regulations adopted under this act shall provide for a board of adjustment to be appointed in the manner and have and exercise all the powers provided in section 11-2707, and each and all of the provisions of said section relating to appeals and judicial review shall be applicable to this act.

History: En. Sec. 9, Ch. 287, L. 1947.

1-719. Constitutional limitation. In any case in which airport zoning regulations adopted under this act, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the constitution of this state or the constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land.

History: En. Sec. 10, Ch. 287, L. 1947.

1-720. Enforcement and remedies. Each violation of this act or of any regulations, orders, or rulings promulgated or made pursuant to this act, shall constitute a misdemeanor and shall be punishable by a fine of not more than five hundred dollars ($500.00) or imprisonment for not more than six (6) months, or by both such fine and imprisonment, and each day a violation continues to exist shall constitute a separate offense. In addition, the political subdivision or agency adopting zoning regulations under this act may institute in any court of competent jurisdiction, an action to prevent, restrain, correct or abate any violation of this act, or of airport zoning regulations adopted under this act, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of this act and of the regulations adopted and orders and rulings made pursuant thereto.

History: En. Sec. 11, Ch. 287, L. 1947.

1-721. Acquisition of air rights. In any case in which: (1) it is desired to remove, lower, or otherwise terminate a nonconforming structure or use; or (2) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this act; or (3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or nonconforming use is located or the political subdivision owning the airport or served by it may acquire, by purchase, grant, or condemnation in the manner provided by the law under which political subdivisions are authorized to acquire real property for public purposes, such air right, aviation easement, or other estate or interest in the property or nonconforming structure or use in question as may be necessary to effectuate the purposes of this act.

History: En. Sec. 12, Ch. 287, L. 1947.

Collateral References

Eminent Domain⇨17.
29A C.J.S. Eminent Domain § 62.

1-722. Severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

History: En. Sec. 13, Ch. 287, L. 1947.

1-723. Short title. This act shall be known and may be cited as the "Airport Zoning Act."

History: En. Sec. 14, Ch. 287, L. 1947.

CHAPTER 8

ESTABLISHMENT OF AIRPORTS BY COUNTIES AND CITIES—MUNICIPAL AIRPORTS ACT

Section 1-801. Counties, cities and towns may acquire land for, and establish airports and landing fields.
1-802. Land when deemed acquired for public use—exercise power of eminent domain.
1-803. Creation of board to govern airport—fees—fund for maintenance—rules and regulations.
1-804. Tax levy for establishment and operation of airports.
1-805. Validation of previous contracts and tax levies.
1-806. Construction of act.
1-807. Highway commission may assist municipalities in constructing roads to airports.
1-808. Definitions.
1-809. General powers of municipalities in the establishment, acquisition, operation and maintenance of airports and air navigation facilities.
1-810. Eminent domain.
1-811. Disposal of airport property.
1-812. Operation and use privileges.
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1-814. Delegation of authority to airport officer or board.
1-815. Regulations and jurisdiction.
1-816. Appropriations and taxation.
1-817. Application of airport revenues and sale proceeds.
1-818. Federal and state aid.
1-819. Mutual aid.
1-820. Contracts.

1-821. Joint operations.
1-822. Public purpose, county and municipal purpose.
1-823. Airport property and income exempt from taxation.
1-824. Supplementary authority.
1-825. Saving clause—airport zoning.
1-826. Interpretation and construction.
1-827. Severability.
1-828. Short title.

1-801. (5668.35) **Counties, cities and towns may acquire land for, and establish airports and landing fields.** Counties, cities and towns in this state, may either individually or by the joint action of a county and one (1) or more of the cities and towns within its border acquire by gift, deed, purchase or condemnation, land for airport or landing field purposes and thereon establish, construct, own, control, lease, equip, improve, operate, and regulate airports or landing fields for the use of airplanes and other aircraft, and may use for such purpose or purposes any property suitable therefor that now or may at any time hereafter be acquired, owned or controlled by such county, city or town.

In addition, a county, city or town may do the acts authorized by this section by acting jointly with one or more counties, with one or more cities, with one or more towns or any combination of such counties, cities or towns. Such airport need not be located within the limits of each subdivision participating in the joint venture, in whole or in part.

History: En. Sec. 1, Ch. 108, L. 1929; amd. Sec. 1, Ch. 54, L. 1941; amd. Sec. 1, Ch. 88, L. 1961.

Cross-Reference

Power of city to acquire landing field, sec. 11-986.

Collateral References

Counties⇦107; Municipal Corporations ⇦718.

20 C.J.S. Counties § 169.

8 Am. Jur. 2d 670, Aviation, § 51 et seq.

Right to use park property for airport. 63 ALR 484 and 144 ALR 486.

Aeroplanes and aeronautics generally. 69 ALR 316, 83 ALR 333 and 99 ALR 173.

Power to establish or maintain public airport, or to create separate public airport authority. 161 ALR 733.

Zoning regulations as affecting airports and airport sites. 161 ALR 1232.

1-802. (5668.36) **Land when deemed acquired for public use—exercise power of eminent domain.** Any lands acquired, owned, controlled or occupied by any county, city or town, individually or pursuant to joint action as herein provided for the purposes enumerated in section 1-801, shall and are hereby declared to be acquired, owned, controlled and occupied for a public use, and as a matter of public necessity, and such counties, cities and towns, whether acting individually or jointly shall have the right to acquire property for such purposes under the power of eminent domain as and for a public use or necessity.

History: En. Sec. 2, Ch. 108, L. 1929; amd. Sec. 2, Ch. 54, L. 1941; amd. Sec. 2, Ch. 88, L. 1961.

Collateral References

Counties⇦103; Municipal Corporations ⇦223.

20 C.J.S. Counties § 165.

1-803. (5668.37) **Creation of board to govern airport—fees—fund for maintenance—rules and regulations.** The county, city or town, acting individually or acting jointly as herein authorized by section 1-801, having established an airport or landing field and acquired property for such purpose, may construct, improve, equip, maintain, and operate the same,

and for that purpose may create a board or body from the inhabitants of such county, city or town, or such joint subdivisions of the state for the purpose of conferring upon them and may confer upon them the jurisdiction for the improvement, equipment, maintenance and operation of such airport or landing field. The board of county commissioners, the city or town council, as the case may be, or the board of county commissioners and the council or councils under a joint venture may adopt rules and establish fees or charges for the use of such airport or landing field, or may authorize such board or body to do so, subject, however, to the approval of the appointing power before the same shall take effect. All expenses of such construction, improvement, equipment, maintenance and operation shall be a charge against such county, city or town, or, when a county, city or town acts jointly under the authority herein given, such charges shall be against the joint subdivisions of the state, and shall be apportioned according to benefits to accrue, the proportion to be paid by each to be fixed in advance by joint resolution of the governing bodies.

For the purpose of meeting the charges hereinbefore mentioned when the airport or landing field is such joint venture, a joint fund shall be created and maintained into which each of the political subdivisions interested shall deposit its proportionate share in accordance with the predetermination of the board of county commissioners and council, or councils, affected.

All disbursements from such fund shall be made by order of such joint board or body, if one be created as hereinabove authorized, otherwise under such rules and regulations as the joint control by the commissioners and council or councils may adopt.

History: En. Sec. 3, Ch. 108, L. 1929; amd. Sec. 3, Ch. 54, L. 1941; amd. Sec. 3, Ch. 88, L. 1961.

Collateral References

Aviation⇐31.

2 C.J.S. Aerial Navigation § 9.

Power to establish or maintain public airport, or to create separate public airport authority. 161 ALR 733.

1-804. (5668.38) **Tax levy for establishment and operation of airports.** For the purpose of establishing, constructing, equipping, maintaining and operating airports and landing fields under the provisions of this act the county commissioners of [or] the city or town council may each year assess and levy in addition to the annual levy for general administrative purposes, a tax of not to exceed two (2) mills on the dollar of taxable value of the property of said county, city or town. In the event of a jointly established airport or landing field, the county commissioners and the council or councils involved shall determine in advance the levy necessary for such purposes and the proportion each political subdivision joining in the venture shall pay, based upon the benefits it is determined each shall derive from the project. Provided that if it be found that the levy hereby authorized will be insufficient for the purposes herein enumerated, the commissioners and councils acting are hereby authorized and empowered to contract an indebtedness on behalf of such county, city or town, as the case may be, upon the credit thereof by borrowing money or issuing bonds for such purposes, provided that no money may be borrowed and no bonds may be issued for

such purpose until the proposition has been submitted to the taxpayers affected thereby, and a majority vote to be cast therefor.

History: En. Sec. 4, Ch. 108, L. 1929; amd. Sec. 4, Ch. 54, L. 1941; amd. Sec. 1, Ch. 54, L. 1945.

Compiler's Note

The bracketed word "or" was inserted by the compiler.

References

Dietrich v. City of Deer Lodge, 124 M 8, 218 P 2d 708, 711.

Collateral References

Counties⇐151, 192; Municipal Corporations⇐867 (1), 962.
20 C.J.S. Counties §§ 226, 281.

1-805. (5668.39) **Validation of previous contracts and tax levies.** All levies and expenditures heretofore made and engagements entered into by counties, cities, or towns for the purposes now contemplated by this act, and all elections held in counties, cities or towns for the purpose of creating indebtedness for such purposes, wherein a majority of the vote cast was in favor of such indebtedness, whether such counties, cities and towns were acting individually or jointly, under the authority of this act, are hereby validated and declared legally created, entered into and made, and all evidence of such indebtedness are declared to be legal obligations of the county, city or town wherein such a majority vote has been cast in favor of such indebtedness.

History: En. Sec. 5, Ch. 108, L. 1929; amd. Sec. 5, Ch. 54, L. 1941.

Collateral References

Counties⇐151; Municipal Corporations ⇐867 (1).
20 C.J.S. Counties § 226.

1-806. (5668.40) **Construction of act.** Nothing in this act shall be construed as repealing section 11-986.

History: En. Sec. 6, Ch. 108, L. 1929.

Collateral References

Municipal Corporations⇐222.

1-807. Highway commission may assist municipalities in constructing roads to airports. The Montana state highway commission is hereby authorized and upon written application of the governing body of any municipal corporation in Montana, to assist such corporations in the location, establishment, construction, reconstruction, maintenance and improvement of highways and roads to and from municipal airports and field development thereof; and the commission shall lend its equipment, machinery, technical services and supervision to the same, under agreements made with each municipal corporation.

History: En. Sec. 1, Ch. 120, L. 1939.

NOTE.—Section 2 of this act, an emergency declaration, is omitted from this code.

1-808. Definitions. As used in this act, unless the text otherwise requires:

(a) "Airport" means any area, of land or water, except a restricted landing area, which is designed for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights of way, whether heretofore or hereafter established.

(b) "Air navigation facility" means any facility other than one owned or controlled by the federal government, used in, available for use in, or designed for use in, aid of air navigation, including airports, restricted landing areas, and any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking-off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted area, and any combination of any or all of such facilities.

(c) "Airport hazard" means any structure, object of natural growth, or use of land, which obstructs the air space required for the flight of aircraft in landing or taking-off at any airport or restricted landing area or is otherwise hazardous to such landing or taking-off.

(d) "Municipality" means any county, city, village or town of this state and any other political subdivision, public corporation, authority, or district in this state which is or may be authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities.

(e) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee or other similar representative thereof.

History: En. Sec. 1, Ch. 288, L. 1947. **Collateral References**

Aviation⇦1.
2 C.J.S. Aerial Navigation § 1.

1-809. General powers of municipalities in the establishment, acquisition, operation and maintenance of airports and air navigation facilities. (a) Establishment, operation, land acquisition. Every municipality is authorized, out of any appropriations or other moneys made available for such purposes, to plan, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect and police airports and air navigation facilities, either within or without the territorial limits of such municipality and within or without the territorial boundaries of this state, including the construction, installation, equipment, maintenance and operation at such airports of buildings and other facilities for the servicing of aircraft or for the comfort and accommodation of air travelers, and the purchase and sale of supplies, goods and commodities as an incident to the operation of its airport properties. For such purposes the municipality may use any available property that it may now or hereafter own or control and may, by purchase, gift, devise, lease, eminent domain proceedings or otherwise, acquire property, real or personal, or any interest therein including easements in airport hazards or land outside the boundaries of an airport or airport site, as are necessary to permit safe and efficient operation of the airport or to permit the removal, elimination, obstruction-marking or obstruction-lighting of airport hazards or to prevent the establishment of airport hazards.

(b) Acquisition of existing airports. The municipality may, by purchase, gift, devise, lease, eminent domain proceedings or otherwise, acquire existing airports and air navigation facilities, provided however it shall not acquire or take over any airport or air navigation facility owned or

controlled by another municipality or public agency of this or any other state without the consent of such municipality or public agency.

(c) Establishment of airports on public waters and reclaimed lands. For the purposes of this act, a municipality may establish or acquire and maintain, within or bordering upon the territorial limits of the municipality, airports in, over and upon, any public waters of this state, any submerged lands under such public waters, and any artificial or reclaimed lands which before the artificial making or reclamation thereof constituted a portion of the submerged lands under such public waters; and may construct and maintain terminal buildings, landing floats, causeways, roadways and bridges for approaches to or connecting with any such airport, and landing floats and breakwaters for the protection thereof.

(d) Limitation on design and operation of air navigation facilities. All air navigation facilities established or operated by municipalities shall be supplementary to and co-ordinated in design and operation with those established and operated by the federal and state governments.

History: En. Sec. 2, Ch. 288, L. 1947.

Collateral References

Municipal Corporations⇐223.
63 C.J.S. Municipal Corporations § 959.

1-810. Eminent domain. In the acquisition of property by eminent domain proceedings authorized by this act, the municipality shall proceed in the manner provided by the laws governing eminent domain of the state of Montana. The municipality shall not be precluded from abandoning such proceedings in any case where possession of the property has not been taken.

History: En. Sec. 3, Ch. 288, L. 1947.

Collateral References

Eminent Domain⇐17.
29A C.J.S. Eminent Domain § 62.

1-811. Disposal of airport property. Except as may be limited by the terms and conditions of any grant, loan, or agreement pursuant to section 1-818, every municipality may by sale, lease or otherwise, dispose of any airport, air navigation facility or other property, or portion thereof or interest therein, acquired pursuant to this act. Such disposal by sale, lease, or otherwise, shall be in accordance with the laws of this state, or provisions of the charter of the municipality, governing the disposition of other property of the municipality or agency of the state or federal government for aeronautical purposes incident thereto, the sale, lease, or other disposal may be effected in such manner and upon such terms as the governing body of the municipality may deem in the best interest of the municipality.

History: En. Sec. 4, Ch. 288, L. 1947.

Collateral References

Municipal Corporations⇐225 (3).
63 C.J.S. Municipal Corporations § 967.

1-812. Operation and use privileges. (a) Under municipal operation. In operating an airport or air navigation facility owned, leased or controlled by a municipality, such municipality may, except as may be limited by the terms and conditions of any grant, loan, or agreement pursuant to section 1-818, enter into contracts, leases and other arrangements for a term not exceeding twenty years with any persons (1) granting the privi-

lege of using or improving such airport or air navigation facility or any portion or facility thereof, or space therein for commercial purposes; (2) conferring the privilege of supplying goods, commodities, things, services or facilities at such airport or air navigation facility; or (3) making available services to be furnished by the municipality or its agents at such airport or air navigation facility.

In each case the municipality may establish the terms and conditions and fix the charges, rentals or fees for the privileges or services, which shall be reasonable and uniform for the same class of privilege or service and shall be established with due regard to the property and improvements used and the expenses of operation to the municipality.

(b) Under other operation. Except as may be limited by the terms and conditions of any grant, loan, or agreement pursuant to section 1-818, a municipality may by contract, lease or other arrangement, upon a consideration fixed by it, grant to any qualified person for a term not to exceed twenty (20) years the privilege of operating, as agent of the municipality or otherwise, any airport owned or controlled by the municipality; provided that no such person shall be granted any authority to operate such an airport other than as a public airport or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which the municipality might not have undertaken under subsection (a) of this section.

History: En. Sec. 5, Ch. 288, L. 1947.

Airport Manager as Agent

Where in a lease of hangar facilities at a city and county airport, the parties named one of the lessees as airport manager, it was apparent that the parties had this section in mind and the use of the word "manager" implied that he was to be the agent of the airport commission. Barovich v. City of Miles City, 135 M 394, 340 P 2d 819.

1-813. Liens. To enforce the payment of any charges for repairs or improvements to or storage or care of, any personal property made or furnished by the municipality or its agents in connection with the operation of an airport or air navigation facility owned or operated by the municipality, the municipality shall have liens on such property, which shall be enforceable by the municipality as provided by law.

History: En. Sec. 6, Ch. 288, L. 1947.

1-814. Delegation of authority to airport officer or board. Any authority vested by this act in a municipality or in the governing body thereof, for the planning, establishment, development, construction, enlargement, improvement, maintenance, equipment, operation, regulation, protection and policing of airports or other air navigation facilities established, owned or controlled, or to be established, owned or controlled by the municipality may be vested by resolution of the governing body of the municipality in an officer or board or other municipal agency whose powers and duties shall be prescribed in the resolution; provided, however, that the expense of such planning, establishment, development, construction, enlargement, improvement, maintenance, equipment, operation, regulation, protection and policing shall be a responsibility of the municipality.

History: En. Sec. 7, Ch. 288, L. 1947.

1-815. Regulations and jurisdiction. (a) Scope. A municipality, which has established or acquired or which may hereafter establish or acquire an airport or air navigation facility, is authorized to adopt, amend and repeal such reasonable ordinances, resolutions, rules, regulations and orders as it shall deem necessary for the management, government and use of such airport or air navigation facility under its control, whether situated within or without the territorial limits of the municipality. For the enforcement thereof, the municipality may, by ordinance or resolution, as may by law be appropriate, appoint airport guards or police, with full police powers, and fix penalties, within the limits prescribed by law, for the violation of the aforesaid ordinances, resolutions, rules, regulations and orders. Said penalties shall be enforced in the same manner in which penalties prescribed by other ordinances, or resolutions of the municipality are enforced. To the extent that an airport or other air navigation facility controlled and operated by a municipality is located outside the territorial limits of the municipality, it shall, subject to federal and state laws, rules and regulations, be under the jurisdiction and control of the municipality controlling or operating it, and no other municipality shall have any authority to charge or exact a license fee or occupation tax for operations thereon.

(b) Conformity to federal and state law. All ordinances, resolutions, rules, regulations or orders which are issued by the municipality shall be kept in substantial conformity with the laws of this state or any regulations promulgated or standards established pursuant thereto, and, as nearly as may be, with the federal laws governing aeronautics and the rules, regulations and standards duly issued thereunder.

History: En. Sec. 8, Ch. 288, L. 1947.

1-816. Appropriations and taxation. The governing body of any municipality having power to appropriate and raise money, is hereby authorized to appropriate, and to raise by taxation or otherwise, sufficient moneys to carry out the provisions and purposes of this act, within the limitations prescribed by law.

History: En. Sec. 9, Ch. 288, L. 1947.

References

State v. Hale, 129 M 449, 291 P 2d 229, 235.

Collateral References

Municipal Corporations⇐860, 962.

64 C.J.S. Municipal Corporations §§ 1836, 1993.

1-817. Application of airport revenues and sale proceeds. The revenues obtained by a municipality from the ownership, control or operation of any airport or air navigation facility, including proceeds from the sale of any airport or portion thereof or air navigation facility property, shall be deposited in a special fund to be designated the "..... Airport Fund," which revenues shall be appropriated solely to, and used by the municipality for, the purposes authorized by this act.

History: En. Sec. 10, Ch. 288, L. 1947.

1-818. Federal and state aid. (a) Acceptance authorized, conditions. Every municipality is authorized to accept, receive, receipt for, disburse and expend federal and state moneys and other moneys, public or private, made available by grant or loan or both to accomplish, in whole or in part,

any of the purposes of this act. All federal moneys accepted under this section shall be accepted and expended by the municipality upon such terms and conditions as are prescribed by the United States and as are consistent with state law; and all state moneys accepted under this section shall be accepted and expended by the municipality upon such terms and conditions as are prescribed by the state. Unless otherwise prescribed by the agency from which such moneys were received, the chief financial officer of the municipality shall, on its behalf deposit all moneys received pursuant to this section and shall keep them, in separate funds designated according to the purposes for which the moneys were made available, in trust for such purposes.

Provided, however, that no application shall be made by any municipality for federal aid, as herein provided, until and unless the "project application," as defined in the Federal Airport Act of 1946 and regulations of the administrator of civil aeronautics, shall have first been approved by the state aeronautical commission.

(b) Aeronautics commission as agent. A municipality is authorized, with the approval and consent of the Montana aeronautics commission, to designate the said aeronautics commission as its agent to accept, receive, receipt for and disburse federal and state moneys, and other moneys, public or private, made available by grant or loan or both to accomplish, in whole or in part, any of the purposes of this act; and to designate the said commission, first having its consent, as its agent in contracting for and supervising the planning, acquisition, development, construction, improvement or equipment of any airport or other air navigation facility. All contracts made, let or awarded by the state aeronautics commission acting as agent of a municipality under authority of this section, shall be made, let or awarded pursuant to the laws governing the making of contracts by or on behalf of the state. Such municipality may enter into an agreement with the said aeronautics commission, providing for payment to said aeronautics commission for services rendered as such agent, and prescribing the terms and conditions of the agency in accordance with such terms and conditions as are prescribed by the United States, if federal money is involved, and in accordance with the applicable laws of this state. All federal moneys accepted under this section by the state aeronautics commission shall be accepted and transferred or expended by said commission upon such terms and conditions as are prescribed by United States. All moneys received by the state aeronautics commission pursuant to this subsection shall be deposited in the state treasury, and unless otherwise prescribed by the agency from which such moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available, and held by the state in trust for such purposes.

History: En. Sec. 11, Ch. 288, L. 1947.

Compiler's Note

The Federal Airport Act of 1946, referred to in the second paragraph, is compiled in the United States Code as Tit. 49, § 1101 et seq.

References

State v. Hale, 129 M 449, 291 P 2d 229, 235.

1-819. Mutual aid. If any municipality determines that the public interest and the interests of the municipality will be served by assisting

any other municipality or municipalities in exercising the powers and authority granted by this act, such municipality may furnish assistance by gift of real or personal property, or lease or loan thereof with or without charge or interest. In appropriating such property or money and providing for such assistance by taxation, the issuance of bonds, or other means, the municipality may exercise all of its powers as though used for its own direct purposes as provided in this act.

History: En. Sec. 12, Ch. 288, L. 1947.

1-820. Contracts. A municipality may enter into any contracts necessary to the execution of the powers granted it, and for the purposes provided by this act.

History: En. Sec. 13, Ch. 288, L. 1947.

1-821. Joint operations. (a) Authorization. For the purposes of this section, unless otherwise qualified, the term "public agency" includes municipality, as defined in this act, any agency of the state government and of the United States, and any municipality, political subdivision and agency of another state; and the term "governing body" means the governing body of a county or municipality, and the head of the agency if the public agency is other than a county or municipality. All powers, privileges and authority granted to any municipality by this act may be exercised and enjoyed jointly with any public agency of this state, and jointly with any public agency of any other state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise or enjoyment. If not otherwise authorized by law, any agency of the state government when acting jointly with any municipality, may exercise and enjoy all of the powers, privileges and authority conferred by this act upon a municipality.

(b) Agreement. Any two or more public agencies may enter into agreements with each other for joint action pursuant to the provisions of this section. Concurrent action by ordinance, resolution or otherwise of the governing bodies of the participating public agencies shall constitute joint action. Each such agreement shall specify its duration, the proportionate interest which each public agency shall have in the property, facilities and privileges involved, the proportion to be borne by each public agency of preliminary costs and costs of acquisition, establishment, construction, enlargement, improvement, and equipment of the airport or air navigation facility, the proportion of the expenses of maintenance, operation, regulation and protection thereof to be borne by each, and such other terms as are required by the provisions of this section. The agreement may also provide for: amendments thereof, and conditions and methods of termination of the agreement; the disposal of all or any of the property, facilities and privileges jointly owned, prior to or upon said property, facilities and privileges, or any part thereof, ceasing to be used for the purposes provided in this act, or upon termination of the agreement; the distribution of the proceeds received upon any such disposal, and of any funds or other property jointly owned and undisposed of; the assumption or payment of any indebtedness arising from the joint venture which remains unpaid upon the

disposal of all assets or upon a termination of the agreement; and such other provisions as may be necessary or convenient.

(c) Joint board. Public agencies acting jointly pursuant to this section shall create a joint board which shall consist of members appointed by the governing body of each participating public agency. The number to be appointed, their term and compensation, if any, shall be provided for in the joint agreement. Each such joint board shall organize, select officers for terms to be fixed by the agreement, and adopt and amend from time to time rules for its own procedure. The joint board shall have power to plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect and police any airport or air navigation facility or airport hazard to be jointly acquired, controlled and operated, and such board may exercise on behalf of its constituent public agencies all the powers of each with respect to such airport, air navigation facility or airport hazard, subject to the limitations of subsection (d) of this section.

(d) Limitations of joint board.

(1) Expenditures. The total expenditures to be made by the joint board for any purpose in any calendar year shall be determined by a budget approved by the governing bodies of its constituent public agencies.

(2) Acquisitions beyond sums allotted. No airport, air navigation facility, airport hazard, or real or personal property, the cost of which is in excess of sums therefor fixed by the joint agreement or allotted in the annual budget, may be acquired by the joint board without the approval of the governing bodies of its constituent public agencies.

(3) Eminent domain. Eminent domain proceedings under this section may be instituted only by authority of the governing bodies of the constituent public agencies of the joint board. If so authorized, such proceedings shall be instituted in the names of the constituent public agencies jointly, and the property so acquired shall be held by said public agencies as tenants in common until conveyed by them to the joint board.

(4) Disposal of real property. The joint board shall not dispose of any airport, air navigation facility or real property under its jurisdiction except with the consent of the governing bodies of its constituent public agencies, provided that the joint board may, without such consent, enter into the contract, lease or other arrangements contemplated by section 1-812.

(5) Police regulations. Any resolutions, rules, regulations or orders of the joint board dealing with subjects authorized by section 1-815 shall become effective only upon approval of the governing bodies of the constituent public agencies provided that upon such approval, the resolutions, rules, regulations or orders of the joint board shall have the same force and effect in the territories or jurisdictions involved as the ordinance, resolutions, rules, regulations or orders of each public agency would have in its own territory or jurisdiction.

(e) Joint fund. For the purpose of providing a joint board with moneys for the necessary expenditures in carrying out the provisions of this section, a joint fund shall be created and maintained, into which shall be deposited the share of each of the constituent public agencies as provided by the joint agreement. Each of the constituent public agencies shall provide its share of the fund from sources available to each. Any federal, state or other contributions or loans, and the revenues obtained from the joint

ownership, control and operation of any airport or air navigation facility under the jurisdiction of the joint board shall be paid into the joint fund. Disbursements from such fund shall be made by order of the board, subject to the limitations prescribed in subsection (d) of this section.

History: En. Sec. 14, Ch. 288, L. 1947.

References

Barovich v. City of Miles City, 135 M 394, 340 P 2d 819.

Collateral References

Aviation⇨211.

2 C.J.S. Aerial Navigation § 37.

1-822. Public purpose, county and municipal purpose. The acquisition of any land or interest therein pursuant to this act, the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, protection and policing of airports and air navigation facilities, including the acquisition or elimination of airport hazards, and the exercise of any other powers herein granted to municipalities and other public agencies, to be severally or jointly exercised, are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity; and in the case of any county, are declared to be county functions and purposes as well as public and governmental; and in the case of any municipality other than a county, are declared to be municipal functions and purposes as well as public and governmental. All land and other property and privileges acquired and used by or on behalf of any municipality or other public agency in the manner and for the purposes enumerated in this act, shall, and are hereby declared to be acquired and used for public and governmental purposes and as a matter of public necessity, and, in the case of a county or municipality, for county or municipal purposes, respectively.

History: En. Sec. 15, Ch. 288, L. 1947.

Immunity from Suit

A municipality is immune from suit for injuries resulting from the maintenance or operation of an airport. Barovich v. City of Miles City, 135 M 394, 340 P 2d 819; Holland v. Western Airlines, Inc., 154 F Supp 457, 459.

Liability Insurance

The fact that the city had obtained a policy of liability insurance did not in itself result in any waiver of sovereign immunity from liability for personal injuries sustained by plaintiff when she slipped and fell on floor of municipal airport owned by the city and leased to defendant airline. Holland v. Western Airlines, Inc., 154 F Supp 457, 461.

References

State v. Hale, 126 M 326, 249 P 2d 495; State v. Hale, 129 M 449, 291 P 2d 229, 235.

1-823. Airport property and income exempt from taxation. Any property in this state acquired by a municipality for airport purposes pursuant to the provisions of this act, and any income derived by such municipality from the ownership, operation or control thereof, shall be exempt from taxation to the same extent as other property used for public purposes. Any municipality is authorized to exempt from municipal taxation any property, acquired within its boundaries by a public agency of another state for airport purposes, and any income derived from such property, to the extent that such other states authorize similar exemptions from taxation to municipalities of this state.

History: En. Sec. 16, Ch. 288, L. 1947.

Collateral References

Taxation⇨217, 1048.

84 C.J.S. Taxation § 254; 85 C.J.S. Taxation § 1098.

1-824. Supplementary authority. In addition to the general and special powers conferred by this act, every municipality is authorized to exercise such powers as are necessarily incidental to the exercise of such general and special powers.

History: En. Sec. 17, Ch. 288, 1947.

1-825. Saving clause—airport zoning. Nothing contained in this act shall be construed to limit any right, power or authority of a municipality to regulate airport hazards by zoning.

History: En. Sec. 18, Ch. 288, L. 1947.

1-826. Interpretation and construction. This act shall be so interpreted and construed as to make uniform so far as possible the laws and regulations of this state and other states and of the government of the United States having to do with the subject of municipal airports.

History: En. Sec. 19, Ch. 288, L. 1947.

1-827. Severability. If any provision of this act or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

History: En. Sec. 20, Ch. 288, L. 1947.

Collateral References

Statutes⇐64 (1).
82 C.J.S. Statutes § 92.

1-828. Short title. This act may be cited as the "Municipal Airports Act."

History: En. Sec. 22, Ch. 288, L. 1947.

TITLE 2

AGENCY

Chapter 1. Definition of agency—authority of agents, 2-101 to 2-133.
2. Mutual obligations between principals, agents and third persons, 2-201 to 2-214.
3. Delegation and termination of agency, 2-301 to 2-305.
4. Factors, 2-401 to 2-407.

CHAPTER 1

DEFINITION OF AGENCY—AUTHORITY OF AGENTS

Section 2-101. Agency defined.
2-102. Who may appoint, and who may be an agent.
2-103. Agents, general or special.
2-104. Agency, actual or ostensible.
2-105. Actual agency.
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2-108. Agent may perform acts required of principal by code.
2-109. Agent to conform to his authority.
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2-113. Agent cannot have authority to defraud principal.
2-114. Creation of agency.
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2-117. Ratification of agent's act.
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2-119. When ratification void.
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2-121. Rescission of ratification.
2-122. Measure of agent's authority.
2-123. Actual authority defined.
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2-125. Agent's authority as to persons having notice of restrictions upon it.
2-126. Agent's necessary authority.
2-127. Agent's power to disobey instructions.
2-128. Authority construed by its specific rather than by its general terms.
2-129. Exceptions to general authority.
2-130. What included in authority to sell personal property.
2-131. What included in authority to sell real property.
2-132. Authority of general agent to receive price of property.
2-133. Authority of special agent to receive price.

2-101. (7928) **Agency defined.** An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency.

History: En. Sec. 3070, Civ. C. 1895; re-en. Sec. 5413, Rev. C. 1907; re-en. Sec. 7928, R. C. M. 1921. Cal. Civ. C. Sec. 2295. Field Civ. C. Sec. 1216.

Cross-Reference

Agent acting for corporation when law not complied with, misdemeanor, sec. 94-2320.

Insurance Adjuster as Agent of Vehicle Owner

Where after automobile collision plaintiff wrote to owner of other vehicle respecting damage to his automobile and was referred to adjuster of insurance company, and after meeting with adjuster such adjuster agreed to pay a certain sum as damages, which sum was never paid,

owner of such other vehicle was liable on such agreement in suit brought by plaintiff. Selby v. Victoria Mines, Inc., 124 M 321, 221 P 2d 423, explained in 210 F Supp 317, 331.

References

State v. Tuffs, 54 M 20, 25, 165 P 1107; Butte Floral Co. v. Reed, 65 M 138, 152, 211 P 325; Hamilton v. Lion Head Ski Lift, Inc., 139 M 335, 363 P 2d 716, 719.

Collateral References

Principal and Agent⇨1-3.
2 C.J.S. Agency § 1 et seq.
3 Am. Jur. 2d 419, Agency, § 1.

Rights of parties under oral agreement to buy or bid in land for another. 27 ALR 2d 1285.

2-102. (7929) **Who may appoint, and who may be an agent.** Any person having capacity to contract may appoint an agent, and any person may be an agent.

History: En. Sec. 3071, Civ. C. 1895; re-en. Sec. 5414, Rev. C. 1907; re-en. Sec. 7929, R. C. M. 1921. Cal. Civ. C. Sec. 2296. Field Civ. C. Sec. 1217.

Collateral References

Principal and Agent⇨4, 5.
2 C.J.S. Agency §§ 13-15.
3 Am. Jur. 2d 424, Agency, §§ 9-16.

2-103. (7930) **Agents, general or special.** An agent for a particular act or transaction is called a special agent. All others are general agents.

History: En. Sec. 3072, Civ. C. 1895; re-en. Sec. 5415, Rev. C. 1907; re-en. Sec. 7930, R. C. M. 1921. Cal. Civ. C. Sec. 2297. Field Civ. C. Sec. 1218.

General Agent

A local agent of a fire insurance company who had authority to accept risks, issue policies and cancel the same, collect premiums and consent to assignments of policies and to a change of title on foreclosure, unrestricted or hedged about with limitations, will be held to have possessed the powers of a general agent of the insurer. Baker v. Union Assurance Society of London, Ltd., 81 M 281, 295, 264 P 132.

Special Agent

One to whom a money order was given by another, with instructions to see if it was all right, and, if so, to get it cashed, was a special agent of the latter, within the meaning of this section. Moore v. Skyles, 33 M 135, 137, 82 P 799.

A person dealing with a special agent is bound at his peril to ascertain the scope of the agent's authority. Moore v. Skyles, 33 M 135, 138, 82 P 799; Schaeffer v. Mutual Benefit Life Ins. Co., 38 M 459, 465, 100 P 225; Northwestern Electric Equipment Co. v. Leighton, 66 M 529, 213 P 1094; Benema v. Union Central Life Ins. Co., 94 M 138, 147, 21 P 2d 69.

If a person, in negotiating for the purchase of land, deals with an agent whom he knows to be a special one, and makes a partial payment to him, which the agent has no right to receive, after which the deal falls through, the receipt of the agent for the money is not the receipt of the principal, and the payer cannot recover such payment from the principal. Schaeffer v. Mutual Benefit Life Ins. Co., 38 M 459, 466, 100 P 225.

Where one not in the general employment of the owner of an automobile was directed by the latter to take the car to a prospective purchaser for the purpose of demonstration and then take it to the garage, he was the special agent of the owner for that and no other purpose. Susser v. Delovage, 73 M 354, 359, 236 P 1082.

Rule that one dealing with a special agent is bound at his peril to ascertain the scope of the agent's authority applies not only to special agents employed for a single transaction but to agents who have only special authority. Barrett v. McHattie, 102 M 473, 476, 59 P 2d 794.

Collateral References

Principal and Agent⇨93, 94.
2 C.J.S. Agency § 100 et seq.

2-104. (7931) **Agency, actual or ostensible.** An agency is either actual or ostensible.

History: En. Sec. 3073, Civ. C. 1895; re-en. Sec. 5416, Rev. C. 1907; re-en. Sec. 7931, R. C. M. 1921. Cal. Civ. C. Sec. 2298. Field Civ. C. Sec. 1219.

Agency May Be Implied

Agency may be implied from conduct and from all the facts and circumstances in the case, and may be shown by cir-

cumstantial evidence. Also, ratification may be implied from the acts and conduct of the alleged principal. Freeman v. Withers, 104 M 166, 172, 65 P 2d 601.

Ratification

In an action to recover oil well driller's wages, and on an assigned claim for supplies furnished at the instance and request of an employee of the operator, evidence held to have warranted a judgment for plaintiff on theory that the persons at whose instance the claims were incurred were agents of defendant operator whose acts the latter had ratified with knowledge of the facts resulting in the claims. Stoican v. Withers, 104 M 173, 174, 65 P 2d 604.

References

Weidenaar v. New York Life Ins. Co., 36 M 592, 610, 94 P 1; Hamilton v. Lion Head Ski Lift, Inc., 139 M 335, 363 P 2d 716, 718.

Collateral References

Principal and Agent⇐14, 95 et seq.
2 C.J.S. Agency §§ 3, 97 et seq.

2-105. (7932) **Actual agency.** An agency is actual when the agent is really employed by the principal.

History: En. Sec. 3074, Civ. C. 1895; re-en. Sec. 5417, Rev. C. 1907; re-en. Sec. 7932, R. C. M. 1921. Cal. Civ. C. Sec. 2299. Field Civ. C. Sec. 1220.

References

Weidenaar v. New York Life Ins. Co., 36 M 592, 610, 94 P 1; Hempstead v. Allen, 126 M 578, 255 P 2d 342, 344.

2-106. (7933) **Ostensible agency.** An agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent who is not really employed by him.

History; En. Sec. 3075, Civ. C. 1895; re-en. Sec. 5418, Rev. C. 1907; re-en. Sec. 7933. R. C. M. 1921. Cal. Civ. C. Sec. 2300. Field Civ. C. Sec. 1221.

Acquiescence in Agency

Where a hotel company had acted as a ski lift company's agent in managing the latter's business, and where the hotel company's principal stockholder had later taken possession of and controlled the ski lift company's office and principal place of business for two years, the principal stockholder was the agent of the ski lift company in negotiating an employment contract, and this was further confirmed when the stockholder engaged counsel to defend the ski lift company in the instant litigation. Hamilton v. Lion Head Ski Lift, Inc., 139 M 335, 363 P 2d 716, 719, explained in 146 M 432, 437, 408 P 2d 151.

Acts and Statements Establishing Agency

To constitute one an ostensible agent, the party sought to be held as principal must, by reason of some act or want of ordinary care on his part, have led the other party to believe he was his agent, even though not actually employed by him. Hartt v. Jahn, 59 M 173, 182, 196 P 153.

Evidence that a lien claimant who performed work on defendant's building dealt with a brother of the attorney in fact of the owner, which brother was looking after the building either at the request of the attorney in fact or the owner and collected rents and endorsed rent checks received was sufficient to sustain trial court's finding of agency, since the brother with whom the contract was made was at least the ostensible agent of the owner. Doney v. Ellison, 103 M 591, 597, 64 P 2d 348.

In an action against a bank for the conversion of plaintiff's funds deposited in a joint account in her own name and that of her daughter in wrongfully paying practically the entire account to the daughter on checks issued by the latter, evidence that plaintiff in opening the account told the bank cashier that she was placing her affairs in the daughter's hands and wished her to have complete charge of the account without requiring plaintiff's presence, attention or signature, established the daughter's agency in any transaction had with the bank. Ludwig v. Montana Bank & Trust Co., 109 M 477, 496, 98 P 2d 377.

Where a husband signed a letter employing an attorney and where his wife conferred with the attorney several times and approved his actions with the husband's knowledge and without his expressed disapproval, and where the husband claimed the benefits of the attorney's actions, the wife was the ostensible agent of the husband. Purcell v. Gibbs, 133 M 481, 326 P 2d 679.

Burden of Proof

Where plaintiff in his complaint contended that there was a partnership he assumed the burden of establishing that there was one in fact, or that the partners had permitted themselves to be represented as such to him and that on the faith of such representations, he had given

the credit to the partnership. Hempstead v. Allen, 126 M 578, 255 P 2d 342, 344.

Estoppel

Where one to whom another is indebted, by want of ordinary care, causes the debtor to believe that a third person is his agent for the purpose of receiving payment, such latter is the ostensible agent of the creditor, and payment having been received by the agent, the principal is estopped to disavow it. Millious v. Thompson, 94 M 110, 118, 20 P 2d 1060.

Insufficient Evidence

The facts that plaintiff, in a letter to a bank, enclosed with the deed, notes and mortgage to be executed by defendant, the supplemental contract between G. and defendant, that it was delivered to him with the deed and that plaintiff did not thereafter repudiate the contract, did not, under the circumstances, amount to a holding out of G. as his agent so as to make it binding upon himself. Hartt v. Jahn, 59 M 173, 182, 196 P 153.

Negligence

Where appellant failed to establish a case of negligence against the supposed agent, it would be impossible to impute negligence to the principal. Knowlton v. Sandaker, — M —, 436 P 2d 98.

References

Weidenaar v. New York Life Ins. Co., 36 M 592, 610, 94 P 1; Union Bank & Trust Co. v. Lynn, 73 M 473, 479, 237 P 490; Arnold v. Genzberger, 96 M 358, 381, 31 P 2d 296; State v. Erlandson, 126 M 316, 249 P 2d 794, 798.

Collateral References

Principal and Agent⇨99.
2 C.J.S. Agency § 99.

Apparent or ostensible authority of corporate agent to hire employees for life. 28 ALR 2d 935.

Apparent authority as affecting responsibility for loss from theft or the like, where seller turns over goods at buyer's premises. 50 ALR 2d 330.

2-107. (7934) **What authority may be conferred.** An agent may be authorized to do any acts which his principal might do, except those to which the latter is bound to give his personal attention.

History: En. Sec. 3080, Civ. C. 1895; re-en. Sec. 5419, Rev. C. 1907; re-en. Sec. 7934, R. C. M. 1921. Cal. Civ. C. Sec. 2304. Field Civ. C. Sec. 1222.

Collateral References

Principal and Agent⇨91 et seq.
2 C.J.S. Agency §§ 11, 12.
3 Am. Jur. 2d 474, Agency, § 72.

2-108. (7935) **Agent may perform acts required of principal by code.** Every act which, according to this code, may be done by or to any person, may be done by or to the agent of such person for that purpose, unless a contrary intention clearly appears.

History: En. Sec. 3081, Civ. C. 1895; re-en. Sec. 5420, Rev. C. 1907; re-en. Sec. 7935, R. C. M. 1921. Cal. Civ. C. Sec. 2305. Field Civ. C. Sec. 1223.

References

Breese v. O'Brien, 102 M 547, 556, 59 P 2d 65.

Collateral References

Principal and Agent⇨14, 98 et seq.
2 C.J.S. Agency §§ 11, 12, 91 et seq.

2-109. (7801) **Agent to conform to his authority.** An agent must not exceed the limits of his actual authority, as defined by the chapters on agency.

History: En. Sec. 2740, Civ. C. 1895; re-en. Sec. 5286, Rev. C. 1907; re-en. Sec. 7801, R. C. M. 1921. Cal. Civ. C. Sec. 2019. Field Civ. C. Sec. 1041.

Collateral References

Principal and Agent⇨48.
2 C.J.S. Agency § 91 et seq.; 3 C.J.S. Agency § 138 et seq.
3 Am. Jur. 2d 472, Agency, § 71.

2-110. (7802) **Agent must keep his principal informed.** An agent must use ordinary diligence to keep his principal informed of his acts in the course of the agency.

History: En. Sec. 2741, Civ. C. 1895; re-en. Sec. 5287, Rev. C 1907; re-en. Sec. 7802, R. C. M. 1921. Cal. Civ. C. Sec. 2020. Field Civ. C. Sec. 1042.

Collateral References

3 Am. Jur. 2d 581, Agency, § 200.

2-111. (7803) **Collecting agent.** An agent employed to collect a negotiable instrument must collect it promptly, and take all measures necessary to charge the parties thereto, in case of its dishonor; and, if it is a bill of exchange, must present it for acceptance with reasonable diligence.

History: En. Sec. 2742, Civ. C. 1895; re-en. Sec. 5288, Rev. C. 1907; re-en Sec. 7803, R. C. M. 1921. Cal. Civ. C. Sec. 2021. Field Civ. C. Sec. 1043.

2-112. (7804) **Responsibility of subagent.** A mere agent of an agent is not responsible as such to the principal of the latter.

History: En. Sec. 2743, Civ. C. 1895; re-en. Sec. 5289, Rev. C. 1907; re-en. Sec. 7804, R. C. M. 1921. Cal. Civ. C. Sec. 2022. Field Civ. C. Sec. 1044.

Collateral References

Principal and Agent⇨54.
2 C.J.S. Agency § 134 et seq.
3 Am. Jur. 2d 545, Agency, § 154.

2-113. (7936) **Agent cannot have authority to defraud principal.** An agent can never have authority, either actual or ostensible, to do an act which is, and is known or suspected by the person with whom he deals, to be a fraud upon the principal.

History: En. Sec. 3082, Civ. C. 1895; re-en. Sec. 5421, Rev. C. 1907; re-en. Sec. 7936, R. C. M. 1921. Cal. Civ. C. Sec. 2306. Field Civ. C. Sec. 1224.

Acting in Dual Capacity

The general rule that knowledge of the agent is imputable to his principal has no application where the agent is acting in a dual capacity, as where he, though formally acting as such, is in reality acting in his own or another's interest and adversely to his principal. Harrison State Bank v. United States Fidelity & Guaranty Co., 94 M 100, 107, 22 P 2d 1061.

2-114. (7937) **Creation of agency.** An agency may be created, and an authority may be conferred, by a precedent authorization or a subsequent ratification.

History: En. Sec. 3083, Civ. C. 1895; re-en. Sec. 5422, Rev. C. 1907; re-en. Sec. 7937, R. C. M. 1921. Cal. Civ. C. Sec. 2307. Field Civ. C. Sec. 1225.

Fraudulent Purpose

An agreement between applicants for public lands, made by one of the parties for his wife and ratified by her, the purpose of the agreement being to stifle competition in bidding, is a fraud on the state and is not enforceable. State ex rel. Danaher v. Miller, 52 M 562, 568, 160 P 513.

How Authority of Agent To Be Established

Agency may be created by precedent authorization or subsequent ratification and may be implied from conduct and shown by circumstantial evidence. Ratification may likewise be implied from the acts and conduct of the alleged principal. Freeman v. Withers, 104 M 166, 172, 65 P 2d 601.

The authority of an agent and its nature and extent can only be established by tracing it to its source in some word or act of the alleged principal; the agent cannot confer authority upon himself. The relationship of principal and agent cannot be established by the declarations of the agent. Federal Land Bank of Spokane v. Myhre, 110 M 416, 421, 101 P 2d 1017.

References

Hamilton v. Lion Head Ski Lift, Inc., 139 M 335, 363 P 2d 716, 718.

Collateral References

Principal and Agent⇨7-13, 163 et seq.
2 C.J.S. Agency §§ 16 et seq., 34 et seq.
3 Am. Jur. 2d 430, Agency, § 20.

2-115. (7938) **Consideration unnecessary.** A consideration is not necessary to make an authority, whether precedent or subsequent, binding upon the principal.

History: En. Sec. 3084, Civ. C. 1895; re-en. Sec. 5423, Rev. C. 1907; re-en. Sec. 7938, R. C. M. 1921. Cal. Civ. C. Sec. 2308. Field Civ. C. Sec. 1226.

Consent Necessary

Agency is founded upon consent not consideration. State v. Erlandson, 126 M 316, 249 P 2d 794, 798.

Collateral References

Principal and Agent⇨1, 8.
2 C.J.S. Agency §§ 19, 43.

2-116. (7939) **Form of authority.** An oral authorization is sufficient for any purpose, except that an authority to enter into a contract required by law to be in writing can only be given an instrument in writing.

History: En. Sec. 3085, Civ. C. 1895; re-en. Sec. 5424, Rev. C. 1907; re-en. Sec. 7939, R. C. M. 1921. Cal. Civ. C. Sec. 2309. Based on Field Civ. C. Sec. 1227.

Authority Granted Orally or Implied from Words and Conduct

Where mother opened joint bank account in both her own and daughter's names and told the cashier she was placing her affairs in the daughter's hands and wished her to have complete charge of the account without requiring the mother's presence, attention or signature, the mother established the daughter's agency, under the rule that such authority may be granted orally or implied from the words and conduct of the parties and the circumstances of the particular case though denied by the alleged principal, under this section. Ludwig v. Montana Bank & Trust Co., 109 M 477, 496, 98 P 2d 377.

Contract To Sell Land

The authority of an agent to contract to sell land before the adoption of this section was not required to be in writing, and could be shown by oral testimony, or any evidence tending to prove agency. Cobban v. Hecklen, 27 M 245, 257, 70 P 805.

Corporation Agent Acting without Written Authorization

To make the rule that a corporation may be bound by an act of its agent in entering into a written contract not to be performed within one year without specific written authority on the part of the agent to act, required by this section, applicable, the evidence must show that such agent was the managing official of the corporation or that it had theretofore ratified the agent's acts in similar transactions. Electrical Products Consolidated v. El Campo, Inc., 105 M 386, 391, 73 P 2d 199.

In an action for breach of a written contract entered into between an agent of defendant corporation and plaintiff, running over three years, where agent's authority was not in writing as required by this section, held, that trial court erred in directing a verdict for plaintiff in the absence of such written authority, the record, on the contrary, disclosing that the management of the corporation was vested in the board of directors—ratification or estoppel not entering into the case. Electrical Products Consolidated v. El Campo, Inc., 105 M 386, 392, 73 P 2d 199.

References

Case v. Kramer, 34 M 142, 149, 85 P 878; Lindsley v. McGrath, 34 M 564, 569, 87 P 961; Edwards v. Plains Light & Water Co., 49 M 535, 545, 143 P 962; Hartt v. Jahn, 59 M 173, 181, 196 P 153; Sunburst Oil & Gas Co. v. Neville, 79 M 550, 562, 257 P 1016; Barrett v. McHattie, 102 M 473, 475, 59 P 2d 794; State v. Erlandson, 126 M 316, 249 P 2d 794, 798.

Collateral References

Principal and Agent⇨12.
2 C.J.S. Agency § 25 et seq.

Agent's authority to agree contemporaneously with sale to repurchase or resell or for return of personal property. 34 ALR 2d 510.

Authority of agent to endorse and transfer commercial paper. 37 ALR 2d 453.

2-117. (7940) **Ratification of agent's act.** A ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified, or where an oral authorization would suffice, by accepting or restraining the benefit of the act, with notice thereof.

History: En. Sec. 3086, Civ. C. 1895; re-en. Sec. 5425, Rev. C. 1907; re-en. Sec. 7940, R. C. M. 1921. Cal. Civ. C. Sec. 2310. Field Civ. C. Sec. 1228.

Acceptance by Principal of Results of Act

To constitute ratification of an agent's act, there must be an acceptance by the principal of the results of the act with an

intent to ratify and with full knowledge of all the material circumstances. Pew v. McLeish, 62 M 437, 440, 205 P 235.

Before a principal may be said to have ratified an unauthorized act of his agent, it must be shown that the former accepted the results of the act of the latter with the intent to ratify and with full knowledge of all the material circumstances. Outlook Farmers' Elevator Co. v. American Surety Co., 70 M 8, 17, 223 P 905.

A principal who, with knowledge, accepts the benefits of a transaction conducted by an assumed agent, is deemed to have ratified it in toto. Bell v. Grimstad, 82 M 185, 196, 266 P 394.

Where a principal accepts a contract made by his agent he takes it as the agent made it and subject to all equities and defenses arising out of the conditions thereof, and the means and instrumentalities by which the agent procured it, even though the agent acted without authority or in excess of his powers. Bell v. Grimstad, 82 M 185, 196, 266 P 394.

A conviction may be had of the owner of a tavern for the sale of beer to a minor although such sale was made by a barmaid who was not on the defendant's payroll but acted at times as bartender when the manager was gone. The owner by her silence and by accepting and retaining the benefits of the sales by the barmaid whom she knew was acting as a substitute bartender for her manager did ratify said acts. State v. Erlandson, 126 M 316, 249 P 2d 794, 798.

Gambling Transactions

In an action by an elevator company against its former manager and his surety to recover for funds misappropriated by him in grain gambling transactions, refusal of the court to submit the question of ratification of the manager's acts by the company was proper, where it appeared that the gambling transactions were carried on with a commission house in Minneapolis under fictitious names which made reports to the manager so drawn as to conceal their real character, and that the directors of the company did not know of their existence until after the termination of the manager's employment who had informed them that he was not gambling. Outlook Farmers' Elevator Co. v. American Surety Co., 70 M 8, 17, 233 P 905.

Purchase of Lumber

In an action to recover for lumber furnished in the erection of a building the purchase of which was claimed by plaintiff to have been ratified by the defendant owner, by his subsequent promise to pay for it if it had actually been delivered, evidence tending to show ratification held insufficient to meet the requirements of the rule above. Pew v. McLeish, 62 M 437, 440, 205 P 235.

References

Cobban v. Hecklen, 27 M 245, 258, 70 P 805; Weidenaar v. New York Life Ins. Co., 36 M 592, 616, 94 P 1; Koerner v. Northern Pacific Ry. Co., 56 M 511, 520, 186 P 337; Arnold v. Genzberger, 96 M 358, 387, 31 P 2d 296.

Collateral References

Principal and Agent⇐163 et seq.
2 C.J.S. Agency § 39 et seq.
3 Am. Jur. 2d 548, Agency, § 160.

Ratification by principal of payment of purchase money to agent authorized to sell real property. 30 ALR 2d 805.

Ratification by principal's acceptance of payment of purchase to agent authorized to sell real property. 30 ALR 2d 824.

Ratification of agent's unauthorized agreement contemporaneously with sale to repurchase or resell or for return of personal property. 34 ALR 2d 524.

Ratification of salesman's pledge of principal's personal property. 49 ALR 2d 1277.

2-118. (7941) **Ratification of part of a transaction.** Ratification of part of an indivisible transaction is a ratification of the whole.

History: En. Sec. 3087, Civ. C. 1895; re-en. Sec. 5426, Rev. C. 1907; re-en. Sec. 7941, R. C. M. 1921. Cal. Civ. C. Sec. 2311. Field Civ. C. Sec. 1229.

Acceptance of Benefits

Where at the solicitation of the agent of a bank defendant executed a promissory note, transferred personal property as collateral, and then entered into a written agreement with the agent that the maker should not be held liable on the note, the three contracts constituted but a single transaction, by accepting the benefits flowing from a portion of which the bank, under this section, ratified the whole thereof and was not in a position to assert that in agreeing to relieve defendant from liability on the note the agent exceeded his authority. United States Nat. Bank of Red Lodge v. Chappell, 71 M 553, 569, 230 P 1084.

Where a manufacturer accepts a contract containing ambiguous terms executed by his agent for the sale of goods and acts upon it by shipping them to the dealer, he is not in position to urge that the agent was without authority to make it; ratification by him of a part of an indivisible contract is ratification of the whole. New

Home Sewing Machine Co. v. Songer, 91 M 127, 133, 7 P 2d 238.

Where a landowner claimed the benefit of an attorney's action in clearing title by paying part of a tax claim as part of a settlement, the landowner ratified other stipulations entered into by the attorney as a part of the same settlement and embodied in the same decree. Purcell v. Gibbs, 133 M 481, 326 P 2d 679.

Unauthorized Act

If a principal ratifies a part of his agent's unauthorized act, he ratifies it in its entirety. Arnold v. Genzberger, 96 M 358, 379, 31 P 2d 296.

Collateral References

Principal and Agent⇨172.
2 C.J.S. Agency § 66.

2-119. (7942) **When ratification void.** A ratification is not valid unless, at the time of ratifying the act done, the principal has power to confer authority for such an act.

History: En. Sec. 3088, Civ. C. 1895; re-en. Sec. 5427, Rev. C. 1907; re-en. Sec. 7942, R. C. M. 1921. Cal. Civ. C. Sec. 2312. Field Civ. C. Sec. 1230.

Contract between Promoters

A contract between promoters under the terms of which one of them agreed to sell, at par, less a certain commission, expenses, etc., shares of stock to be issued by a corporation after its organization did not ipso facto by its incorporation become the contract of the company, since, to bind it, formal action by its board of directors looking to its assumption or adoption was necessary, and a corporation cannot be bound by contracts made in its behalf before it comes into existence. Kirkup v. Anaconda Amusement Co., 59 M 469, 478, 197 P 1005, 17 ALR 441.

Deposit of County Funds without Security

A county, not having authority to empower its treasurer to make a general deposit of its funds without requiring security as provided by statute, cannot ratify the treasurer's wrongful act in doing so. Yellowstone County v. First Trust & Savings Bank, 46 M 439, 451, 128 P 596.

Collateral References

Principal and Agent⇨165.
2 C.J.S. Agency § 34 et seq.

2-120. (7943) **Ratification not to work injury to third persons.** No unauthorized act can be made valid, retroactively, to the prejudice of third persons, without their consent.

History: En. Sec. 3089, Civ. C. 1895; re-en. Sec. 5428, Rev. C. 1907; re-en. Sec. 7943, R. C. M. 1921. Cal. Civ. C. Sec. 2313. Field Civ. C. Sec. 1231.

References

Kirkup v. Anaconda Amusement Co., 59 M 469, 478, 197 P 1005; Corey v. Sunburst Oil & Gas Co., 72 M 383, 398, 233 P 909.

Collateral References

Principal and Agent⇨175 (3).
2 C.J.S. Agency § 64 et seq.

2-121. (7944) **Rescission of ratification.** A ratification may be rescinded when made without such consent as is required in a contract, or with an imperfect knowledge of the material facts of the transaction ratified, but not otherwise.

History: En. Sec. 3090, Civ. C. 1895; re-en. Sec. 5429, Rev. C. 1907; re-en. Sec. 7944, R. C. M. 1921. Cal. Civ. C. Sec. 2314. Field Civ. C. Sec. 1232.

Unauthorized Act

By the terms of this section it is essential, in order that the ratification of an unauthorized act of an agent be valid, that the principal have full knowledge of all material facts relative to the transaction, at the time of the ratification. First State Bank of Hilger v. Lang, 55 M 146, 157, 174 P 597, 9 ALR 1139.

Collateral References

Principal and Agency⇨176.
2 C.J.S. Agency § 67.

2-122. (7945) **Measure of agent's authority.** An agent has such authority as the principal actually or ostensibly confers upon him.

History: En. Sec. 3091, Civ. C. 1895; re-en. Sec. 5430, Rev. C. 1907; re-en. Sec. 7945, R. C. M. 1921. Cal. Civ. C. Sec. 2315. Field Civ. C. Sec. 1233.

Conduct of Business

Employee of used car dealer who had been left on the sales lot with the authority to show, demonstrate, quote prices and make trade-in deals, was clothed with sufficient power to conduct the business, in the absence of his employer, and was agent of the employer in dealing with the public and promoting sale of used cars on the sales lot of his employer. White v. Sorenson, 141 M 318, 377 P 2d 364, 366.

Incur Obligations

It is not essential to the existence of the relationship of principal and agent that the agent be clothed with authority to incur obligations in the name of the principal. State v. Tuffs, 54 M 20, 26, 165 P 1107.

Waiver of Notice of Proof of Loss

Where the certificate of authority of a local fire insurance agent did not show that the agent was empowered to waive notice and proof of loss, and there was no proof of ostensible authority in him so to do, the agent was without authority to waive the conditions. Careve v. Phoenix Ins. Co., 67 M 236, 243, 215 P 235.

References

Kennedy v. The Grand Fraternity, 36 M 325, 342, 92 P 971; Weidenaar v. New York Life Ins. Co., 36 M 592, 610, 94 P 1; First State Bank of Hilger v. Lang, 55 M 146, 155, 174 P 597; Butte Floral Co. v. Reed, 65 M 138, 152, 211 P 325; Eastman Kodak Co. v. Sibley, 72 M 338, 343, 233 P 613; Bell v. Grimstad, 82 M 185, 196, 266 P 394; Doney v. Ellison, 103 M 591, 597, 64 P 2d 348; Coover v. Davis, 112 M 605, 609, 121 P 2d 985.

Collateral References

Principal and Agent⇐91 et seq.
2 C.J.S. Agency § 91 et seq.
3 Am. Jur. 2d 470, Agency, § 69 et seq.

2-123. (7946) **Actual authority defined.** Actual authority is such as the principal intentionally confers upon the agent, or intentionally, or by want of ordinary care, allows the agent to believe himself to possess.

History: En. Sec. 3092, Civ. C. 1895; re-en. Sec. 5431, Rev. C. 1907; re-en. Sec. 7946, R. C. M. 1921. Cal. Civ. C. Sec. 2316. Field Civ. C. Sec. 1234.

References

Kennedy v. The Grand Fraternity, 36 M 325, 342, 92 P 971; Weidenaar v. New York Life Ins. Co., 36 M 592, 610, 94 P 1; Careve v. Phoenix Ins. Co., 67 M 236, 243, 215 P 235; White v. Sorenson, 141 M 318, 377 P 2d 364, 366.

Collateral References

Principal and Agent⇐95-97.
2 C.J.S. Agency § 91 et seq.
3 Am. Jur. 2d 470, Agency, § 69.

2-124. (7947) **Ostensible authority defined.** Ostensible authority is such as a principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess.

History: En. Sec. 3093, Civ. C. 1895; re-en. Sec. 5432, Rev. C. 1907; re-en. Sec. 7947, R. C. M. 1921. Cal. Civ. C. Sec. 2317. Field Civ. C. Sec. 1235.

Acts and Statements Establishing Agency

To constitute one an ostensible agent, the party sought to be held as principal must, by reason of some act or want of ordinary care on his part, have led the other party to believe he was his agent, even though not actually employed by him. Hartt v. Jahn, 59 M 173, 182, 196 P 153.

Where a person is shown to have been the agent of another in a particular business, and continues to act within the apparent scope of his prior authority, it will be presumed that his authority still continues and his acts will bind his former principal even though the agent's authority has been revoked, if the persons dealing with him had no notice of the revocation and relied upon the continued existence of his agency. Eastman Kodak Co. v. Sibley, 72 M 338, 343, 233 P 613.

Evidence that a lien claimant who performed work on a defendant's building dealt with a brother of the attorney in fact of the owner, which brother was looking after the building at the request of the attorney in fact or of the owner and collected rents and endorsed rent checks received, was sufficient to sustain trial court's finding of agency, since the brother with whom the contract was made was at least the ostensible agent of the owner. Doney v. Ellison, 103 M 591, 597, 64 P 2d 348.

Estoppel

Under the doctrine of ostensible authority (this section), where a principal makes it possible by his conduct for his agent to inflict injury upon a third person who

dealt with him in good faith under his apparent authority, he is bound by the acts of the agent and estopped from denying the authority of the latter to act. Lindblom v. Employers' Liability Assurance Corp., 88 M 488, 500, 295 P 1007.

Knowledge of Extent of Authority

The president of a corporation is chargeable with knowledge of the extent of the authority of its secretary and therefore may not rely upon ostensible authority in the latter to enter into a contract with him (the president) for the performance of an act in behalf of the corporation which he knew the secretary had no power to make. Stanton v. Occidental Life Ins. Co., 81 M 44, 59, 261 P 620.

Permissive Use of Vehicle by Employee

The mere permissive use by a truck driver of his employer's truck for personal purposes did not make the owner of the truck liable for the driver's negligence under the doctrine of ostensible authority. Searle v. Great Northern Ry. Co., 189 F Supp 423, 428.

References

Case v. Kramer, 34 M 142, 150, 85 P 878; Kennedy v. The Grand Fraternity, 36 M 325, 343, 92 P 971; Weidenaar v. New York Life Ins. Co., 36 M 592, 610, 94 P 1; First State Bank of Hilger v. Lang, 55 M 146, 155, 174 P 597; Mayfield v. Montana Life Ins. Co., 62 M 535, 545, 205 P 669; Mahoney Bros. v. Hansen Packing Co., 67 M 120, 123, 215 P 506; Careve v. Phoenix Ins. Co., 67 M 236, 243, 215 P 235; Bell v. Grimstad, 82 M 185, 196, 266 P 394; Coover v. Davis, 112 M 605, 609, 121 P 2d 985; State v. Erlandson, 126 M 316, 249 P 2d 794, 798; White v. Sorenson, 141 M 318, 377 P 2d 364, 366.

Collateral References

Principal and Agent⊂=99.
2 C.J.S. Agency § 99.
3 Am. Jur. 2d 475, Agency, §§ 73-75.

Apparent or ostensible authority of corporate agent to hire employees for life. 28 ALR 2d 935.

2-125. (7948) **Agent's authority as to persons having notice of restrictions upon it.** Every agent has actually such authority as is defined by sections 2-101 to 2-407 of this code, unless specially deprived thereof by his principal, and has even then such authority ostensibly, except as to persons who have actual or constructive notice of the restriction upon his authority.

History: En. Sec. 3094, Civ. C. 1895; re-en. Sec. 5433, Rev. C. 1907; re-en. Sec. 7948, R. C. M. 1921. Cal. Civ. C. Sec. 2318. Field Civ. C. Sec. 1236.

Constructive Notice

A person who brings suit to recover money paid on a life insurance premium note, given before the rejecting of his application, must be charged with constructive notice of the restriction placed upon the authority of the insurance agent, where, by the use of reasonable diligence, such authority could have been ascertained. Weidenaar v. New York Life Ins. Co., 36 M 592, 616, 94 P 1.

References

Careve v. Phoenix Ins. Co., 67 M 236, 243, 215 P 235.

2-126. (7949) **Agent's necessary authority.** An agent has authority:

1. To do everything necessary and proper and usual, in the ordinary course of business, for effecting the purpose of his agency; and,

2. To make a representation respecting any matter of fact, not including the terms of his authority, but upon which his right to use his authority depends, and the truth of which cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made.

History: En. Sec. 3095, Civ. C. 1895; re-en. Sec. 5434, Rev. C. 1907; re-en. Sec. 7949, R. C. M. 1921. Cal. Civ. C. Sec. 2319. Field Civ. C. Sec. 1237.

Extent of Authority

An agent has authority "to do everything necessary and proper and usual, in the ordinary course of business, for effecting the purpose of his agency." Commercial Credit Co. v. Blair, 84 M 314, 320, 275 P 748.

References

Case v. Kramer, 34 M 142, 150, 85 P 878; Weidenaar v. New York Life Ins. Co., 36 M 592, 611, 94 P 1; Mahoney Bros. v. Hansen Packing Co., 67 M 120, 123, 215 P 506.

Collateral References

Real estate broker's authority under power of attorney to execute contract of sale in behalf of principal. 43 ALR 2d 1022.

2-127. (7950) **Agent's power to disobey instructions.** An agent has power to disobey instructions in dealing with the subject of the agency in cases where it is clearly for the interest of his principal that he should do so, and there is not time to communicate with the principal.

History: En. Sec. 3096, Civ. C. 1895; re-en. Sec. 5435, Rev. C. 1907; re-en. Sec. 7950, R. C. M. 1921. Cal. Civ. C. Sec. 2320. Field Civ. C. Sec. 1238.

Collateral References

Principal and Agent⇐57, 150 et seq.
2 C.J.S. Agency § 94 et seq.

2-128. (7951) **Authority construed by its specific rather than by its general terms.** When an authority is given partly in general and partly in specific terms, the general authority gives no higher powers than those specifically mentioned.

History: En. Sec. 3097, Civ. C. 1895; re-en. Sec. 5436, Rev. C. 1907; re-en. Sec. 7951, R. C. M. 1921. Cal. Civ. C. Sec. 2321. Field Civ. C. Sec. 1239.

Collateral References

Principal and Agent⇐96, 97.
2 C.J.S. Agency §§ 91 et seq., 121 et seq.

2-129. (7952) **Exceptions to general authority.** An authority expressed in general terms, however broad, does not authorize an agent:

1. To act in his own name, unless it is the usual course of business to do so;

2. To define the scope of his agency; or,

3. To do any act which a trustee is forbidden to do by sections 86-301 to 86-312 of this code.

History: En. Sec. 3098, Civ. C. 1895; re-en. Sec. 5437, Rev. C. 1907; re-en. Sec. 7952, R. C. M. 1921. Cal. Civ. C. Sec. 2322. Field Civ. C. Sec. 1240.

Fraud and Misrepresentation

Common honesty denies to an agent the right to profit at the expense of his principal by chicane and misrepresentation. Middlefork Cattle Co. v. Todd, 49 M 259, 262, 141 P 641.

References

Crowley v. Rorvig, 61 M 245, 262, 203 P 496.

2-130. (7953) **What included in authority to sell personal property.** An authority to sell personal property includes authority to warrant the title of the principal, and the quantity and quality of the property.

History: En. Sec. 3099, Civ. C. 1895; re-en. Sec. 5438, Rev. C. 1907; re-en. Sec. 7953, R. C. M. 1921. Cal. Civ. C. Sec. 2323. Field Civ. C. Sec. 1241.

Collateral References

Principal and Agent⇐104.
2 C.J.S. Agency § 114 et seq.
3 Am. Jur. 2d 498, Agency, § 99.

Implied or apparent authority of agent selling personal property to make warranties. 40 ALR 2d 285.

2-131. (7954) **What included in authority to sell real property.** An authority to sell and convey real property includes authority to give the usual covenants of warranty.

History: En. Sec. 3100, Civ. C. 1895; re-en. Sec. 5439, Rev. C. 1907; re-en. Sec. 7954, R. C. M. 1921. Cal. Civ. C. Sec. 2324. Field Civ. C. Sec. 1242.

Cross-Reference

Authority to be in writing, sec. 13-606.

Collateral References

3 Am. Jur. 2d 515, Agency, § 119.

Payment to agent authorized to sell real property as payment to principal. 30 ALR 2d 805.

2-132. (7955) **Authority of general agent to receive price of property.** A general agent to sell, who is entrusted by the principal with the possession of the thing sold, has authority to receive the price.

History: En. Sec. 3101, Civ. C. 1895; re-en. Sec. 5440, Rev. C. 1907; re-en. Sec. 7955, R. C. M. 1921. Cal. Civ. C. Sec. 2325. Field Civ. C. Sec. 1243.

Collateral References

Principal and Agent⊂105 (2).
2 C.J.S. Agency §§ 107, 108, 114.

2-133. (7956) **Authority of special agent to receive price.** A special agent to sell has authority to receive the price on delivery of the thing sold, but not afterwards.

History: En. Sec. 3102, Civ. C. 1895; re-en. Sec. 5441, Rev. C. 1907; re-en. Sec. 7956, R. C. M. 1921. Cal. Civ. C. Sec. 2326. Field Civ. C. Sec. 1244.

References

Schaeffer v. Mutual Benefit Life Ins. Co., 38 M 459, 466, 100 P 225.

CHAPTER 2

MUTUAL OBLIGATIONS BETWEEN PRINCIPALS, AGENTS AND THIRD PERSONS

Section 2-201. Principal—how affected by acts of agent within the scope of his authority.
2-202. Principal—when bound by incomplete execution of authority.
2-203. Notice to agent—when notice to principal.
2-204. Obligation of principal when agent exceeds his authority.
2-205. Principal bound by acts of agent done under a mere ostensible authority.
2-206. When exclusive credit is given to agent.
2-207. Rights of person who deals with agent without knowledge of agency.
2-208. Instrument intended to bind principal does bind him.
2-209. Principal's responsibility for agent's negligence or omission.
2-210. Principal's responsibility for wrongs willfully committed by agent.
2-211. Warranty of authority.
2-212. Agent's responsibility to third persons.
2-213. Obligation of agent to surrender to third person property received for principal.
2-214. Agent not having capacity to contract.

2-201. (7957) **Principal—how affected by acts of agent within the scope of his authority.** An agent represents his principal for all purposes within the scope of his actual or ostensible authority, and all the rights and liabilities which would accrue to the agent from transactions within such limit, if they had been entered into on his own account, accrue to the principal.

History: En. Sec. 3110, Civ. C. 1895; re-en. Sec. 5442, Rev. C. 1907; re-en. Sec. 7957, R. C. M. 1921. Cal. Civ. C. Sec. 2330. Field Civ. C. Sec. 1245.

Attorney and Client

The rule that a principal is presumed to have notice of that of which the agent has notice and ought in good faith and the exercise of ordinary care to communicate to his principal, as applied to client (principal) and attorney (agent) does not pertain to facts acquired prior to the employment of the attorney or in the transaction of business for another client. Hansen v. Johnson, 90 M 597, 608, 4 P 2d 1088, explained in 221 F Supp 721, 723, 724.

Demonstration of Car

Where an automobile dealer's chauffeur was demonstrating a car for his employer and permitted the prospective buyer's daughter to drive the car and the girl lost control of the car, and the chauffeur, then took hold of the wheel and steered the car upon the sidewalk striking a pedestrian, the chauffeur was acting within the scope of his employment and the employer was liable for the injuries suffered by the pedestrian. Hoffman v. Roehl, 61 M 290, 297, 203 P 349, 20 ALR 189.

Sale of Land

Where the agency of one who was instrumental in making a sale of land was admitted by the seller (plaintiff), who made no contention that it had ever been terminated, the evidence on the contrary showing that such agent continued making sales of land for his principal in the same vicinity, the presumption obtains that the agency was still in being at a time thereafter when defendant notified the agent to so construct a ditch that water could be brought upon the land as agreed in the contract, and written notice to the agent was notice to the principal. Healy v. Ginoff, 69 M 116, 131, 220 P 539.

References

Nelson v. Stukey, 89 M 277, 295, 300 P 287.

Collateral References

Principal and Agent⇨91 et seq.

2 C.J.S. Agency § 91 et seq.; 3 C.J.S. Agency § 205 et seq.

3 Am. Jur. 2d 626, Agency, § 261.

2-202. (7958) **Principal—when bound by incomplete execution of authority.** A principal is bound by an incomplete execution of an authority when it is consistent with the whole purpose and scope thereof, but not otherwise.

History: En. Sec. 3111, Civ. C. 1895; re-en. Sec. 5443, Rev. C. 1907; re-en. Sec. 7958, R. C. M. 1921. Cal. Civ. C. Sec. 2331. Field Civ. C. Sec. 1246.

2-203. (7959) **Notice to agent—when notice to principal.** As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other.

History: En. Sec. 3112, Civ. C. 1895; re-en. Sec. 5444, Rev. C. 1907; re-en. Sec. 7959, R. C. M. 1921. Cal. Civ. C. Sec. 2332. Field Civ. C. Sec. 1247.

Assignment for Benefit of Creditors

Under this section, plaintiff corporation must be deemed to have had notice of the facts known to its manager in entering into an agreement whereby its debtor was released from liabilities by his assignment for the benefit of creditors, and its voluntary acceptance of the benefits of the transactions was equivalent to a consent to it. Stone-Ordean-Wells Co. v. Anderson, 66 M 64, 69, 212 P 853.

Redemption of Property

One who joins, through an agent, in the redemption of property sold at a judicial sale, is charged with all the knowledge that the agent possesses concerning the matter. Coombs v. Barker, 31 M 526, 560, 79 P 1.

Sale of Land

Where the agency of one who was instrumental in making a sale of land was admitted by the seller (plaintiff), who made no contention that it had ever been terminated, the evidence on the contrary showing that such agent continued making sales of land for his principal in the same vicinity, the presumption obtains that the agency was still in being at a time thereafter when defendant notified the agent to so construct a ditch that water could be brought upon the land as agreed in the contract, and written notice to the agent was notice to the principal. Healy v. Ginoff, 69 M 116, 131, 220 P 539.

Waiver of Condition

Where the agent of a fire insurance company knew, before writing a policy, that the property in question was mortgaged and that foreclosure proceedings were pending, and thereafter knew of its sale and that the insured was to remain in possession during the period of redemption, and upon inquiry by the latter assured him that the policy was all right without an endorsement relative to the sale, his knowledge was imputable to his principal, and in an action on the policy to recover for loss under it, the insurer must be held to have waived the condition relative to change of title without its consent. Baker v. Union Assurance Society of London, Ltd., 81 M 281, 296, 264 P 132.

Collateral References

Principal and Agent⇨177-182.

3 C.J.S. Agency § 262 et seq.

3 Am. Jur. 2d 635, Agency, §§ 273-282, 284, 285.

Imputation of knowledge of agent acting for both parties to transaction. 4 ALR 3d 224.

2-204. (7960) **Obligation of principal when agent exceeds his authority.** When an agent exceeds his authority, his principal is bound by his author-

ized acts so far only as they can be plainly separated from those which are unauthorized.

History: En. Sec. 3113, Civ. C. 1895; re-en. Sec. 5445, Rev. C. 1907; re-en. Sec. 7960, R. C. M. 1921. Cal. Civ. C. Sec. 2333. Field Civ. C. Sec. 1248.

Collateral References

Principal and Agent⇐150 et seq.
3 C.J.S. Agency § 231 et seq.

2-205. (7691) **Principal bound by acts of agent done under a mere ostensible authority.** A principal is bound by acts of his agent, under a merely ostensible authority, to those persons only who have in good faith, and without ordinary negligence, incurred a liability or parted with value upon the faith thereof.

History: En. Sec. 3114, Civ. C. 1895; re-en. Sec. 5446, Rev. C. 1907; re-en. Sec. 7961, R. C. M. 1921. Cal. Civ. C. Sec. 2334. Field Civ. C. Sec. 1249.

Permissive Use of Vehicle by Employee

The mere permissive use by a truck driver of his employer's truck for personal purposes did not make the owner of the truck liable for the driver's negligence under the doctrine of ostensible authority. Searle v. Great Northern Ry. Co., 189 F Supp 423, 428.

Service of Process

The doctrine of ostensible agency has no application when it becomes involved with the question of whether service of process has been legally made on a "managing or general agent" within the meaning of Rule 4D(2)(e)(i). Kraus v. Treasure Belt Min. Co., 146 M 432, 408 P 2d 151.

References

Weidenaar v. New York Life Ins. Co., 36 M 592, 611, 94 P 1; Healy v. Ginoff, 69 M 116, 131, 220 P 539.

Collateral References

Principal and Agent⇐128 et seq.
3 C.J.S. Agency § 225 et seq.

2-206. (7962) **When exclusive credit is given to agent.** If exclusive credit is given to an agent by the person dealing with him, his principal is exonerated by payment or other satisfaction made by him to his agent in good faith, before receiving notice of the creditor's election to hold him responsible.

History: En. Sec. 3115, Civ. C. 1895; re-en. Sec. 5447, Rev. C. 1907; re-en. Sec. 7962, R. C. M. 1921. Cal. Civ. C. Sec. 2335. Field Civ. C. Sec. 1250.

Mechanic's Lien

Even assuming that a contractor making real estate improvements was acting as the agent of the property owner in purchasing material for the improvement, this section does not apply so as to require any notice from the materialman to the property owner, other than that required by the mechanic's lien law, to perfect a materialman's lien. Monarch Lumber Co. v. Haggard, 139 M 105, 360 P 2d 794.

Collateral References

Principal and Agent⇐143 (6).
3 C.J.S. Agency § 276.

2-207. (7963) **Rights of person who deals with agent without knowledge of agency.** One who deals with an agent without knowing or having reason to believe that the agent acts as such in the transaction, may set off against any claim of the principal arising out of the same, all claims which he might have set off against the agent before notice of the agency.

History: En. Sec. 3116, Civ. C. 1895; re-en. Sec. 5448, Rev. C. 1907; re-en. Sec. 7963, R. C. M. 1921. Cal. Civ. C. Sec. 2336. Field Civ. C. Sec. 1251.

Collateral References

Principal and Agent⇐145 (1).
3 C.J.S. Agency § 244 et seq.
3 Am. Jur. 2d 665, Agency, § 307.

2-208. (7964) **Instrument intended to bind principal does bind him.** An instrument within the scope of his authority, by which an agent in-

tends to bind his principal, does bind him if such intent is plainly inferable from the instrument itself.

History: En. Sec. 3117, Civ. C. 1895; re-en. Sec. 5449, Rev. C. 1907; re-en. Sec. 7964, R. C. M. 1921. Cal. Civ. C. Sec. 2337. Field Civ. C. Sec. 1252.

Business Correspondence

Where the evidence showed that it was the intention of the president of a corporation the stock of which, with the exception of three shares for which the holders paid nothing, was owned by himself, to bind the company by letters written by him personally and relied on by plaintiff, it became bound as fully as if a formal contract had thereafter been executed in his name. Edwards v. Plains Light & Water Co., 49 M 535, 544, 143 P 962.

Collateral References

Principal and Agent⇨101 et seq.
2 C.J.S. Agency § 104 et seq.

2-209. (7965) **Principal's responsibility for agent's negligence or omission.** Unless required by or under the authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in and as a part of the transaction of such business, and for his willful omission to fulfill the obligations of the principal.

History: En. Sec. 3118, Civ. C. 1895; re-en. Sec. 5450, Rev. C. 1907; re-en. Sec. 7965, R. C. M. 1921. Cal. Civ. C. Sec. 2338. Field Civ. C. Sec. 1253.

Assault on Third Person

When a servant in carrying out his assigned duties makes an assault on a third person as a result of a quarrel which arose as a consequence of his performance of the task imposed and at the time and place of performance of the duties he was employed to perform then the master is liable. Kornec v. Mike Horse Min. & Mill. Co., 120 M 1, 180 P 2d 252, 256.

Where controversy between plaintiff and defendant mining company was of long standing concerning right of latter to maintain dam and plaintiff had threatened workers at dam on a previous occasion, the company might reasonably have apprehended that servant sent to repair dam might become involved in altercation with plaintiff and servant assaulted plaintiff at the dam, whether servant in so doing was acting within scope of employment was for jury. Kornec v. Mike Horse Min. & Mill. Co., 120 M 1, 180 P 2d 252, 256.

Customer Tripping over Crate

In action against foreign corporation and its resident employee, who was joined as John Doe, was not served with process and did not appear, for injuries sustained by customer who tripped over orange crate which had been allegedly placed in aisle of corporation's store by employee, the test for removal of cause to federal court on diversity of citizenship was whether employee had any real connection with controversy; a resident citizen, properly joined, is not merely a nominal party who can be ignored because not served or has not appeared; held, that corporation not entitled to have action removed on ground of diversity of citizenship. Jansen v. Safeway Stores, Inc., 24 F Supp 585.

Demonstration of Car

Where an automobile dealer's chauffeur was demonstrating a car for his employer and permitted the prospective buyer's daughter to drive the car and the girl lost control of the car, and the chauffeur, then took hold of the wheel and steered the car upon the sidewalk striking a pedestrian, the chauffeur was acting within the scope of his employment and the employer was liable for the injuries suffered by the pedestrian. Hoffman v. Roehl, 61 M 290, 297, 203 P 349, 20 ALR 189.

Doctrine of Respondeat Superior

Where, in an action for slander brought by a customer of a chain store who was charged by the manager thereof with passing a bad check, obtaining change and ordering a sack of flour sent to an address where there was no house, the rule is that the wrongs for which liability attaches to the principal include not only acts of negligence but malicious, wanton and willful acts as well, and the agent's deviation from express instructions or even act in utter disobedience thereof, does not generally relieve the principal if the acts were in furtherance of or incidental to the agent's employment. Keller v. Safeway Stores, Inc., 111 M 28, 35, 108 P 2d 605.

Drunken Driver

United States was not liable for damages occasioned by the negligent driving by an army driver, where such driver, in

disobedience of his orders, went out of his way, to a tavern where he drank, and then while driving an army vehicle back to base became involved in an accident. The deviation from the master's business and orders was so great as to show that the driver was on his own mission. St. Paul Fire & Marine Ins. Co. v. United States, 116 F Supp 51, 53.

Responsibility of Principal for Agent's Wrongs

Under this section and section 2-210, where an employer is sought to be held responsible under the doctrine of respondeat superior, the decisive question is whether the agent or employee was acting within the scope of his employment. If he was acting independently of his employer or while on a mission of his own, the employer may not be held accountable in damages. Meinecke v. Intermountain Transportation Co., 101 M 315, 327, 55 P 2d 680.

When Acting in Scope of Employment Presumed

In an action to recover damages for personal injuries suffered in an automobile collision caused by the negligence of the driver of the car, employed by a motor company as a salesman of secondhand cars working on a commission basis, the rebuttable presumption is that, where the ownership of the car is established and that the driver was in the employ of the owner, the driver was at the time acting within the scope of his employment. Eliason v. Geil, 114 M 97, 99, 132 P 2d 158.

References

Harrington v. H. D. Lee Mercantile Co., 97 M 40, 59, 33 P 2d 553.

Collateral References

Principal and Agent⊂⇒158-161.
3 C.J.S. Agency § 257.
3 Am. Jur. 2d 631, Agency, § 267.

2-210. (7966) **Principal's responsibility for wrongs willfully committed by agent.** A principal is responsible for no other wrongs committed by his agent than those mentioned in the last section, unless he has authorized or ratified them, even though they are committed while the agent is engaged in his service.

History: En. Sec. 3119, Civ. C. 1895; re-en. Sec. 5451, Rev. C. 1907; re-en. Sec. 7966, R. C. M. 1921. Cal. Civ. C. Sec. 2339. Field Civ. C. Sec. 1254.

Malicious Acts of Servant

Under the general rule that a master is liable for the torts of his servants if committed within the scope of his employment, willful and malicious acts of the servant are imputable to the master. Kornec v. Mike Horse Min. & Mill. Co., 120 M 1, 180 P 2d 252, 256.

References

Harrington v. H. D. Lee Mercantile Co., 97 M 40, 61, 33 P 2d 553; Meinecke v. Intermountain Transportation Co., 101 M 315, 326, 55 P 2d 680; Keller v. Safeway Stores, Inc., 111 M 28, 35, 108 P 2d 605.

2-211. (7967) **Warranty of authority.** One who assumes to act as an agent thereby warrants, to all who deal with him in that capacity, that he has the authority which he assumes.

History: En. Sec. 3130, Civ. C. 1895; re-en. Sec. 5452, Rev. C. 1907; re-en. Sec. 7967, R. C. M. 1921. Cal. Civ. C. Sec. 2342. Field Civ. C. Sec. 1255.

Collateral References

Principal and Agent⊂⇒149 et seq.
3 C.J.S. Agency § 234.

2-212. (7968) **Agent's responsibility to third persons.** One who assumes to act as an agent is responsible to third persons as a principal for his acts in the course of his agency, in any of the following cases, and in no other:

1. When, with his consent, credit is given to him personally in a transaction;

2. When he enters into a written contract in the name of his principal, without believing, in good faith, that he has authority to do so; or,

3. When his acts are wrongful in their nature.

History: En. Sec. 3131, Civ. C. 1895; re-en. Sec. 5453, Rev. C. 1907; re-en. Sec. 7968, R. C. M. 1921. Cal. Civ. C. Sec. 2343. Field Civ. C. Sec. 1256.

Personal Liability on Contract

An agent is not personally liable on a contract entered into by him on behalf of his principal if he disclosed the identity of the latter and made the engagement for him. This section embodies in principle the same rule. Farr v. Stein, 54 M 529, 531, 172 P 135.

Where plaintiffs, in their suit to foreclose a mechanic's lien proceeded upon the theory that one of the three defendants was the agent of the other two (owners of the property), and the agent was not shown to have done anything to make himself personally liable (this section) for the work done, entry of judgment against him was error. Arnold v. Genzberger, 96 M 358, 371, 31 P 2d 296.

Where seller at auction sale required assurances from principal before it would accept the agent's drafts on principal in payment for cattle purchased, the seller could not hold the agent personally liable on the contract even though it permitted the agent to bid in at the auction without disclosing his principal. Yellowstone Livestock Commission v. Dupuis, 133 M 454, 325 P 2d 691.

Trust Estate

The effect of section 86-507, declaring in substance that a trustee is a general agent for the trust property to the same extent as the acts of an agent bind his principal, viewed in connection with this section, is either that the trust estate is to be considered an entity chargeable as a principal for the acts of the trustee, its agent, or that the legal incidents of the trustee's authorized acts, so far as the parties are concerned, are the same as those which would attach to an agent's authorized transactions for his principal. Tuttle v. Union Bank & Trust Co., 112 M 568, 577, 119 P 2d 884, 139 ALR 127.

References

Ahlquist v. Mulvaney Realty Co., 116 M 6, 30, 152 P 2d 137.

Collateral References

Principal and Agent⚿136 et seq.
3 C.J.S. Agency § 205 et seq.
3 Am. Jur. 2d 654, Agency, §§ 293, 294.

2-213. (7969) **Obligation of agent to surrender to third person property received for principal.** If an agent receives anything for the benefit of his principal, to the possession of which another person is entitled, he must, on demand, surrender it to such person, or so much of it as he has under his control at the time of demand, on being indemnified for any advance which he has made to his principal, in good faith, on account of the same; and is responsible therefor, if, after notice to the owner, he delivers it to his principal.

History: En. Sec. 3132, Civ. C. 1895; re-en. Sec. 5454, Rev. C. 1907; re-en. Sec. 7969, R. C. M. 1921. Cal. Civ. C. Sec. 2344. Field Civ. C. Sec. 1257.

2-214. (7970) **Agent not having capacity to contract.** The provisions of the three preceding sections are subject to the provisions of sections 64-101 to 64-114 of this code.

History: En. Sec. 3133, Civ. C. 1895; re-en. Sec. 5455, Rev. C. 1907; re-en. Sec. 7970, R. C. M. 1921. Cal. Civ. C. Sec. 2345. Field Civ. C. Sec. 1258.

Collateral References

Infants⚿6; Insane Persons⚿4; Principal and Agent⚿5.

2 C.J.S. Agency § 14; 43 C.J.S. Infants § 21; 44 C.J.S. Insane Persons §§ 3, 98.

CHAPTER 3

DELEGATION AND TERMINATION OF AGENCY

Section 2-301. Agent's delegation of powers.
2-302. Agent's unauthorized employment of subagent.
2-303. Subagent, rightfully appointed, represents principal.
2-304. Termination of agency.
2-305. Termination of agency—where coupled with an interest.

2-301. (7971) **Agent's delegation of powers.** An agent, unless specially forbidden by his principal to do so, can delegate his powers to another person in any of the following cases, and in no others:

1. When the act to be done is purely mechanical;
2. When it is such as the agent cannot himself, and the subagent can, lawfully perform;
3. When it is the usage of the place to delegate such powers; or,
4. When such delegation is specially authorized by the principal.

History: En. Sec. 3140, Civ. C. 1895; re-en. Sec. 5456, Rev. C. 1907; re-en. Sec. 7971, R. C. M. 1921. Cal. Civ. C. Sec. 2349. Field Civ. C. Sec. 1259.

Employment of Medical Assistance

Where an agent was authorized by a master to employ medical assistance for an injured servant, such agent had no authority to delegate to a physician employed authority to employ an assistant. Bond v. Hurd, 31 M 314, 320, 78 P 579.

Signing of Insurance Policy

Under this section, where the president of a bank, acting as agent for a fire insurance company, had determined a particular risk when a policy was first issued to the insured, he had the right to delegate to the cashier of the bank, who had for a considerable period of time handled much of the detail work in connection with issuing policies, the right to countersign a renewal policy. Altermatt v. Rocky Mountain Fire Ins. Co., 85 M 419, 424, 427, 279 P 243.

Evidence that it was customary for insurance agents in a certain locality to entrust clerks and assistants with the signing of fire insurance policies in the name of the local agent, was admissible under this section. Altermatt v. Rocky Mountain Fire Ins. Co., 85 M 419, 424, 427, 279 P 243.

References

Bond v. Hurd, 31 M 314, 320, 78 P 579; Weidenaar v. New York Life Ins. Co., 36 M 592, 617, 94 P 1.

Collateral References

Principal and Agent⇐54.
2 C.J.S. Agency § 134 et seq.
3 Am. Jur. 2d 540, Agency, §§ 149-159.

2-302. (7972) **Agent's unauthorized employment of subagent.** If an agent employs a subagent without authority, the former is a principal and the latter his agent, and the principal of the former has no connection with the latter.

History: En. Sec. 3141, Civ. C. 1895; re-en. Sec. 5457, Rev. C. 1907; re-en. Sec. 7972, R. C. M. 1921. Cal. Civ. C. Sec. 2350. Field Civ. C. Sec. 1260.

References

Arnold v. Genzberger, 96 M 358, 371, 384, 31 P 2d 296.

2-303. (7973) **Subagent, rightfully appointed, represents principal.** A subagent, lawfully appointed, represents the principal in like manner with the original agent, and the original agent is not responsible to third persons for the acts of the subagent.

History: En. Sec. 3142, Civ. C. 1895; re-en. Sec. 5458, Rev. C. 1907; re-en. Sec. 7973, R. C. M. 1921. Cal Civ. C. Sec. 2351. Field Civ. C. Sec. 1261.

Agent of Receiver

An agent of the receiver of the assignee of a promissory note stands in the same position as the receiver, his principal; and a receiver occupies the same position as his insolvent principal prior to the former's appointment. Erlandson v. Erskine, 76 M 537, 545, 248 P 209.

References

Altermatt v. Rocky Mountain Fire Ins. Co., 85 M 419, 425, 279 P 243; Arnold v. Genzberger, 96 M 358, 371, 31 P 2d 296.

2-304. (7974) **Termination of agency.** An agency is terminated, as to every person having notice thereof, by:

1. The expiration of its term;
2. The extinction of its subject;

3. The death of the agent;
4. His renunciation of the agency; or,
5. The incapacity of the agent to act as such.

History: En. Sec. 3150, Civ. C. 1895; re-en. Sec. 5459, Rev. C. 1907; re-en. Sec. 7974, R. C. M. 1921. Cal. Civ. C. Sec. 2355. Field Civ. C. Sec. 1262.

Construction

This section and section 2-305 are declaratory of the common law. Nord v. Boston & Montana Consol. Copper & Silver Min. Co., 33 M 464, 476, 84 P 1116, 89 P 647.

Collateral References

Principal and Agent⇐29½-46.
2 C.J.S. Agency § 69 et seq.
3 Am. Jur. 2d 440, Agency, §§ 34-59.

Continuation of agency beyond contract period as extending contract for like period. 6 ALR 3d 1352.

2-305. (7975) **Termination of agency—where coupled with an interest.** Unless the power of the agent is coupled with an interest in the subject of the agency, it is terminated, as to every person having notice thereof, by:

1. Its revocation by the principal;
2. His death; or,
3. His incapacity to contract.

History: En. Sec. 3151, Civ. C. 1895; re-en. Sec. 5460, Rev. C. 1907; re-en. Sec. 7975, R. C. M. 1921. Cal. Civ. C. Sec. 2356. Field Civ. C. Sec. 1263.

Agency Revocable at Will

Where, in an action to recover a five per cent commission on the sale price of real estate under a contract of indefinite duration, plaintiff's agency was not coupled with an interest, and he had not procured a purchaser ready, able, and willing to buy, and his efforts to that end were not approaching success, the agency was revocable at the will of the principal. Newman v. Dunleavy, 51 M 149, 155, 149 P 970.

Attorney and Client

That a party becomes insane while indebted to an attorney who was representing him at the time with respect to his property interests does not give such attorney the right per se to appear as attorney for the party's guardian, who, by reason of such appointment, becomes responsible for the estate and the proper conduct of the incompetent's affairs. State ex rel. Davis v. District Court, Second Judicial District, 30 M 8, 11, 75 P 516.

Power Not Coupled with Interest

Power of attorney authorizing physician to perform all future medical services for decedent for which he was to receive $2,000 was not a power coupled with an interest and terminated upon death of decedent. Trenouth v. Mulroney, 124 M 499, 227 P 2d 590, 595.

References

Nord v. Boston & Montana Consol. Copper & Silver Min. Co., 33 M 464, 476, 84 P 1116, 89 P 647.

Collateral References

Principal and Agent⇐29½.
2 C.J.S. Agency § 70.
3 Am. Jur. 2d 460, Agency, §§ 60-67.

What constitutes power coupled with interest within rule as to termination of agency. 28 ALR 2d 1243.

CHAPTER 4

FACTORS

Section 2-401. Factor defined.
2-402. Obedience required from factor.
2-403. Sales on credit.
2-404. Liability of factor under guaranty commission.
2-405. Factor cannot relieve himself from liability.
2-406. Actual authority of factor.
2-407. Ostensible authority.

2-401. (7805) **Factor defined.** A factor is an agent who, in the pursuit of an independent calling, is employed by another to sell property for

him, and is vested by the latter with the possession or control of the property, or authorized to receive payment therefor from the purchaser.

History: En. Sec. 2750, Civ. C. 1895; re-en. Sec. 5290, Rev. C. 1907; re-en. Sec. 7805, R. C. M. 1921. Cal. Civ. C. Sec. 2026. Based on Field Civ. C. Sec. 1045.

Livestock Company

A livestock commission company employed by one to sell livestock for him is a factor within the meaning of this section, and as such entitled to be reimbursed by its principal for advances and disbursements made in good faith in the course of its employment. Bowles Livestock Commission Co. v. Midland Nat. Bank, 94 M 467, 473, 23 P 2d 967.

Collateral References

Factors⇨1.
35 C.J.S. Factors § 1.
32 Am. Jur. 2d 3, Factors and Commission Merchants, §§ 1-5.

2-402. (7806) **Obedience required from factor.** A factor must obey the instructions of his principal to the same extent as any other employee, notwithstanding any advances he may have made to his principal upon the property consigned to him, except that if the principal forbids him to sell at the market price, he may, nevertheless, sell for his reimbursement, after giving to his principal reasonable notice of his intention to do so, and of the time and place of sale, and proceeding in all respects as a pledgee.

History: En. Sec. 2751, Civ. C. 1895; re-en. Sec. 5291, Rev. C. 1907; re-en. Sec. 7806, R. C. M. 1921. Cal. Civ. C. Sec. 2027. Field Civ. C. Sec. 1046.

Collateral References

Factors⇨10-14.
35 C.J.S. Factors §§ 19, 20, 23, 25.
32 Am. Jur. 2d 18, Factors and Commission Merchants, §§ 27-29.

2-403. (7807) **Sales on credit.** A factor may sell property consigned to him on such credit as is usual; but, having once agreed with the purchaser upon the terms of credit, may not extend it.

History: En. Sec. 2752, Civ. C. 1895; re-en. Sec. 5292, Rev. C. 1907; re-en. Sec. 7807, R. C. M. 1921. Cal. Civ. C. Sec. 2028. Field Civ. C. Sec. 1047.

Collateral References

Factors⇨26.
35 C.J.S. Factors §§ 11, 13, 31.

2-404. (7808) **Liability of factor under guaranty commission.** A factor who charges his principal with a guaranty commission upon a sale thereby assumes absolutely to pay the price when it falls due, as if it were a debt of his own, and not as a mere guarantor for the purchaser; but he does not thereby assume any additional responsibility for the safety of his remittance of the proceeds.

History: En. Sec. 2753, Civ. C. 1895; re-en. Sec. 5293, Rev. C. 1907; re-en. Sec. 7808, R. C. M. 1921. Cal. Civ. C. Sec. 2029. Field Civ. C. Sec. 1048.

Collateral References

Factors⇨30.
35 C.J.S. Factors § 38.

2-405. (7809) **Factor cannot relieve himself from liability.** A factor who receives property for sale, under a general agreement or usage to guarantee the sales or the remittance of the proceeds, cannot relieve himself from responsibility therefor without the consent of his principal.

History: En. Sec. 2754, Civ. C. 1895; re-en. Sec. 5294, Rev. C. 1907; re-en. Sec. 7809, R. C. M. 1921. Cal. Civ. C. Sec. 2030. Field Civ. C. Sec. 1049.

2-406. (7979) **Actual authority of factor.** In addition to the authority of agents in general, a factor has actual authority for his principal, unless specially restricted:

1. To insure property consigned to him uninsured;

2. To sell, on credit, anything entrusted to him for sale, except such things as it is contrary to usage to sell on credit; but not to pledge, mortgage, or barter the same; and,

3. To delegate his authority to his partner or servant, but not to any person in an independent employment.

History: **En. Sec. 3171, Civ. C. 1895; re-en. Sec. 5464, Rev. C. 1907; re-en. Sec. 7979, R. C. M. 1921. Cal. Civ. C. Sec. 2368. Field Civ. C. Sec. 1267.**

Collateral References

Factors⇐8 et seq.

35 C.J.S. Factors §§ 8, 16, 55 et seq.

32 Am. Jur. 2d 7, Factors and Commission Merchants, §§ 7-16.

2-407. (7980) **Ostensible authority.** A factor has ostensible authority to deal with the property of his principal as his own, in transactions with persons not having notice of the actual ownership.

History: **En. Sec. 3172, Civ. C. 1895; re-en. Sec. 5465, Rev. C. 1907; re-en. Sec. 7980, R. C. M. 1921. Cal. Civ. C. Sec. 2369. Field Civ. C. Sec. 1268.**

TITLE 3

AGRICULTURE, HORTICULTURE AND DAIRYING

Chapter 1. Department and commissioner of agriculture — creation and general powers, 3-101 to 3-115.
2. Grain standards—storage and inspection—regulation of grain warehousemen, 3-201 to 3-233.
3. Seed warehousemen—licensing, 3-301 to 3-309.
4. Farm storage of grain as basis for farm credit—inspection and certification, 3-401 to 3-420.
5. Protein testing of grain, 3-501 to 3-513.
6. Farm storage public warehousemen, 3-601 to 3-610.
7. Bean warehousemen, 3-701 to 3-715.
8. Agricultural seeds, 3-801 to 3-819.
9. Sealers of grain, 3-901 to 3-906.
10. Harmful barberry control, 3-1001 to 3-1005.
11. Horticulture—control of fruit pests and diseases, 3-1101 to 3-1106.
12. Nurseries and nurserymen—license and regulation, 3-1201 to 3-1217.
13. Orchards—vegetable and plant disease control—quarantine, 3-1301 to 3-1308.
14. Standard grades and brands for Montana farm products, 3-1401 to 3-1412.
15. Miscellaneous powers and duties of department of agriculture, 3-1501 to 3-1515.
16. Farm produce dealer—bond and license, 3-1601 to 3-1603.
17. Commercial fertilizer—regulation of sale (3-1701 to 3-1711 Repealed), 3-1712 to 3-1728.
18. Hay dealers—bond and license, Repealed—Section 1, Chapter 81, Laws of 1959.
19. Mustard seed—grade requirements—purchaser's bond and license, 3-1901 to 3-1912.
20. Commercial feeds—regulation (3-2001 to 3-2011 Repealed), 3-2012 to 3-2024.
21. Poultry products—fruits and vegetables—marketing regulations, 3-2101 to 3-2109.
22. Poultry improvement, 3-2201 to 3-2212.
23. Eggs and egg dealers—license, 3-2301 to 3-2315.
24. Dairies and dairy products—regulation of production and sale, 3-2401 to 3-2487.
25. Montana quality label—use on inspected agricultural and food products, 3-2501 to 3-2505.
26. Grasshopper eradication and control, 3-2601 to 3-2606.
27. Control of noxious rodent pests, 3-2701 to 3-2704.
28. Rural rehabilitation, 3-2801 to 3-2805.
29. Wheat research and marketing, 3-2901 to 3-2920.

CHAPTER 1

DEPARTMENT AND COMMISSIONER OF AGRICULTURE— CREATION AND GENERAL POWERS

Section 3-101. Department of agriculture, labor and industry—creation.
3-101.1. Separation of department of agriculture and department of labor and industry.
3-102. Commissioner of agriculture—appointment and term.
3-103. Salary, and office of commissioner.
3-104. Commissioner may prescribe regulations—seal.
3-105. Appointment and compensation of assistants.
3-106. Annual report.
3-107. Powers and duties of department.
3-108. Organization of divisions.
3-109. Divisions defined.
3-109.1. Horticultural inspection and quarantine service.

3-110. Regulation of farming industry and allied subjects.
3-110.1. Production of fur-bearing animals defined as agricultural pursuit.
3-111. Regulation of farming industry and allied subjects—duties concerning poultry raising.
3-112. Separate division may be created.
3-113. Deceit in grade, measure or test of milk and cream unlawful.
3-114. Penalty for violations—revocation of license.
3-115. The division of grain standards and marketing.

3-101. (3555) **Department of agriculture, labor and industry—creation.** There is hereby created a department of the government of the state of Montana to be known as the "department of agriculture, labor, and industry." The general purpose of said department is the promotion of the agricultural and labor interests of the state of Montana, as hereafter more specifically provided.

History: En. Sec. 1, Ch. 216, L. 1921; re-en. Sec. 3555, R. C. M. 1921.

Compiler's Note

The department of agriculture, labor and industry has been divided into two separate departments; the department of agriculture headed by the commissioner of agriculture and the department of labor and industry headed by the commissioner of labor and industry. See Const., art. XVIII, sec. 1 and sec. 3-101.1

Cross-References

Co-operative agricultural corporations and districts, secs. 14-301 to 14-331.

Co-operative Marketing Act, secs. 14-401 to 14-429.

Crop liens, sec. 45-701 et seq.

Rural Electric Co-operative Act, sec. 14-501 et seq.

State fair, secs. 80-501 to 80-505.

Law Governing

There is no difference between the general provision of section 7, article VII of the constitution that the governor shall nominate and "by and with the consent of the senate" appoint all constitutional appointive officers, the provision of section 1, article XVIII of the constitution authorizing the creation of the department of agriculture, labor and industry [since changed] declaring that a commissioner shall be appointed by the governor "subject to the confirmation of the senate," and the provision of the act creating the department (this section), and that the commission shall "be appointed by the governor, by and with the consent of the senate"; but that, if there be a difference, the constitution must prevail over the declaration of the legislature, and, as between the two constitutional provisions, the special (sec. 1, art. XVIII) controls the general one (sec. 7, art. VII). State ex rel. Nagle v. Stafford, 97 M 275, 279, 34 P 2d 372.

Provisions Are Exclusive

In a proceeding in quo warranto, where the commissioner of agriculture, labor and industry was holding over until his successor should be appointed and qualified, and the appointment of his successor was not made until after adjournment of the legislature, preventing confirmation by the senate, there was no "vacancy" in the office as defined by section 59-602, the provisions of which are exclusive and do not cover a contingency such as the one presented in the instant case, to be filled by appointment, and that therefore the judgment of the district court that the claim of the appointee was without foundation was correct. State ex rel. Nagle v. Stafford, 97 M 275, 279, 34 P 2d 372.

Collateral References

Agriculture⇨2; States⇨45.
3 C.J.S. Agriculture § 6.

3-101.1. Separation of department of agriculture and department of labor and industry. In order to carry out the constitutional mandate in section 1 of article XVIII of the Montana constitution that there shall be separate departments of agriculture and of labor and industry which shall be under control of separate commissioners, and in order to prevent confusion in the designation of the commissioners in charge of the separate departments, (a) the title "commissioner of agriculture, labor and industry" in the following sections of the Revised Codes of Montana of 1947, refers to the commissioner of agriculture: Sections 3-101, 3-102, 3-107, 3-108,

3-110, 3-115, 3-402, 3-502, 3-509, 3-601, 3-805, 3-1101, 3-1801, 3-1805, 3-1906, 3-2003, 3-2010, 3-2104, 3-2106, 3-2401, 3-2402, 3-2403, 3-2404, 3-2413, 3-2418, 3-2456, 3-2457, 3-2459, 3-2460, 3-2471, 66-1901, 84-3006, 84-3008, 84-3011, and in sections 27-506, 27-508, 27-509, 27-510, 27-514, 27-515, 27-516, 27-517, 27-519; and (b) the title "commissioner of agriculture, labor and industry" and the title "commissioner of agriculture" as used in the following sections refers to the "commissioner of labor and industry" created by this act: Sections 3-1502, 3-1503, 3-1504, 41-1201, 41-1202, 92-104.

History: En. Sec. 6, Ch. 177, L. 1951.

Compiler's Notes

Sections 3-1801 and 3-1805, referred to in subdivision (a), were repealed by Sec. 1, Ch. 81 Laws 1959.

Sections 3-2003 and 3-2010, referred to in subdivision (a), were repealed by Sec. 15, Ch. 127, Laws 1963.

Section 27-506, referred to in subdivision (a), was repealed by Sec. 9, Ch. 99, Laws 1953.

Section 66-1901, referred to in subdivision (a), was repealed by Sec. 24, Ch. 250, Laws 1963.

Collateral References

Agriculture⇦2; Labor Relations⇦501.

3 C.J.S. Agriculture § 6; 56 C.J.S. Master and Servant § 14.

3-102. (3556) **Commissioner of agriculture — appointment and term.** The chief executive officer of the department of agriculture, hereinafter referred to as the commissioner of agriculture, shall be a commissioner of agriculture, to be appointed by the governor, by and with the consent of the senate, and such commissioner shall hold office for a term of four years or until his successor is appointed and qualified.

History: En. Sec. 2, Ch. 216, L. 1921; re-en. Sec. 3556, R. C. M. 1921.

Compiler's Note

The compiler has, pursuant to section 3-101.1, substituted "department of agriculture" for "department of agriculture, labor and industry" in this section.

References

State ex rel. Nagle v. Stafford, 97 M 275, 279, 34 P 2d 372.

Collateral References

Agriculture⇦2.

3 C.J.S. Agriculture § 6.

3-103. (3557) **Salary, and office of commissioner.** Before entering upon the duties of his office, the commissioner of agriculture shall take and subscribe the constitutional oath of office. The commissioner shall receive an annual salary in such amount as may be specified by the legislative assembly in the appropriation to the department of agriculture. If the legislative assembly does not specify the maximum salary of the commissioner, any increase in the salary of the commissioner must be approved by the board of examiners. Before approving any salary increase the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. The salary shall be payable in the same manner as the salaries of other state officers, and shall be allowed such expenses as may be actually and necessarily incurred in the performance of his duties. He shall maintain his office at the state capitol.

History: En. Sec. 3, Ch. 216, L. 1921; re-en. Sec. 3557, R. C. M. 1921; amd. Sec. 1, Ch. 110, L. 1953; amd. Sec. 1, Ch. 225, L. 1963; amd. Sec. 9, Ch. 177, L. 1965; amd. Sec. 1, Ch. 237, L. 1967.

Cross-Reference

Bonds of state officers and employees, sec. 6-105 et seq.

References

State ex rel. Nagle v. Stafford, 99 M 88, 43 P 2d 636.

3-104. (3558) **Commissioner may prescribe regulations — seal.** The commissioner of agriculture is empowered to prescribe regulations not inconsistent with law for the government of his department, the conduct of its employees and clerks, the distribution and performance of its business and the custody, use, and preservation of the records, papers, books, documents, and property pertaining thereto. He shall also have authority to designate the form of and to use a seal to authenticate his official acts.

History: En. Sec. 4, Ch. 216, L. 1921; re-en. Sec. 3558, R. C. M. 1921.

Cross-References

Agricultural seed warehouses, rules, sec. 3-306.

Apples packed for sale, inspection, sec. 3-1305.

Bean warehousemen, rules and regulations, sec. 3-710.

Children under sixteen, records to be kept, sec. 10-203.

Eggs and egg dealers, rules and regulations, sec. 3-2310.

Farm produce dealers, authority, secs. 3-1601 to 3-1603.

Farm storage of grain, duties, sec. 3-403.

Farm storage public warehousemen, duties, sec. 3-601 et seq.

Grades for farm products, establishment, sec. 3-1401 et seq.

Industrial accident board, member, sec. 92-104.

Itinerant Merchants Act, issuance of exemption permits, sec. 84-3003.

Montana quality label, duties, sec. 3-2501 et seq.

Mustard seed dealers, duties, sec. 3-1906.

Oleomargarine, duties with respect to, secs. 27-501 to 27-503, 27-505, 27-507 to 27-520.

Produce wholesalers, licensing, sec. 84-3401 et seq.

Protein testing of grain, powers, sec. 3-511.

Sealer of weights and measures, sec. 90-122.

3-105. (3559) **Appointment and compensation of assistants.** The commissioner of agriculture shall have the authority to appoint for the performance of the work of said department such number of secretaries, assistants, clerks, and other employees as he shall deem necessary for the performance of the work of the department, subject, however, to the approval of the state board of examiners. All persons so employed shall receive the compensation fixed by law or fixed by the board or department to whom may be entrusted the power to fix the compensation of deputy state officers and employees; if not so fixed, the commissioner of agriculture shall determine the amount of said compensation. No employee of the department of agriculture, labor, and industry who is paid a fixed compensation shall receive pay for any extra services rendered by him unless expressly authorized by law.

History: En. Sec. 5, Ch. 216, L. 1921; re-en Sec. 3559, R. C. M. 1921.

Compiler's Note

The department of agriculture, labor and industry has been divided into two separate departments; the department of agriculture headed by the commissioner of agriculture and the department of labor and industry headed by the commissioner of labor and industry. The reference in this section would be to the department of agriculture and the commissioner of agriculture. See Const., art. XVIII, sec. 1 and sec. 3-101.1.

3-106. (3560) **Annual report.** The commissioner of agriculture shall annually on or before the first day of December, and at such other times as the governor may require, make a report in writing to the governor concerning the condition, management, and financial transactions of his department.

History: En. Sec. 6, Ch. 216, L. 1921; re-en. Sec. 3560, R. C. M. 1921.

3-107. (3561) **Powers and duties of department.** The department of agriculture shall have power and it shall be its duty:

1. To encourage and promote, in every practicable manner, the interests of agriculture, including horticulture and apiculture, domestic arts, dairying, cheese making, poultry raising, the production of wool, and all other allied industries.

2. To collect and publish statistics relating to the production and marketing of crops and livestock, and of beef, pork, poultry, fish, mutton, wool, butter, cheese, and other agricultural products so far as such statistical information may be of value to the agricultural and allied interests of the state.

3. To assist, encourage, and promote the organization of farmers' institutes, horticultural and agricultural societies, the holding of fairs, livestock shows, or other exhibits of the products of agriculture.

4. To establish and promulgate standards for open and closed receptacles for farm products and standards for the grade and other classification of farm products.

5. To co-operate with producers and consumers in devising and maintaining economical and efficient systems of distribution, and to aid in whatever way may be consistent or necessary in accomplishing the reduction of waste and expense incidental to marketing.

6. To have authority to maintain a market news service, including information as to crops, freight rates, commission rates, and such other matters as may be of service to producers and consumers, acting as a clearinghouse for information between producer and consumer.

7. To gather and diffuse timely information concerning the supply, demand, prevailing prices, and commercial movement of farm products.

8. To investigate the practices and methods of factors, commission merchants, and others who receive, solicit, buy, sell, handle on commission or otherwise, or deal in grain, dairy products, eggs, livestock, vegetables, or other farm products, to the end that the distribution of such commodities through such factors, commission merchants, and others shall be efficiently and economically accomplished without hardship, waste or fraud.

9. To co-operate with the state college of agriculture, the agricultural experiment stations and the federal government to the end that all available agencies may be employed, to the best advantage, for the betterment of the agricultural industries of the state for the improvement of country life and for promoting equality of opportunity for the farmers of the state.

10. To ascertain, as far as possible, what conditions make for the success of a homeseeker and what conditions make for his failure, and to assist in remedying such of the conditions which make for failure as are capable of remedy. To examine or cause to be examined upon application of any land colonization company or lands proposed for colonization, and to certify his findings when conditions warrant:

(A) That the land is suitable for agricultural purposes.

(B) That the location of the land with reference to public roads and shipping facilities is favorable to colonization development.

(C) That the plan of colonization in each instance is in the interest of the settlers or homeseeker.

(D) That the terms of payment are on the amortization plan.

(E) That satisfactory assurance has been given to the commissioner that the plan of colonization adopted will not be changed to the detriment of the homeseeker.

11. To conduct and manage the state fair and to have custody of the state fairgrounds, buildings, and other property belonging thereto.

12. To take and hold in the name of the state of Montana property, real and personal, acquired by gifts, subscriptions, donations, and bequests.

13. To sell and dispose of personal property owned by it in such manner as the commissioner may provide, when in the judgment of the department such sale or disposal best promotes the purposes for which the department is established.

14. To contract in respect to any matter within the scope of its authority.

History: En. Sec. 7, Ch. 216, L. 1921; re-en. Sec. 3561, R. C. M. 1921; amd. Sec. 13, Ch. 80, L. 1961.

3-108. (3562) **Organization of divisions.** For the purpose of the orderly administration of the affairs of the department of agriculture, the same shall be organized into divisions, which divisions shall have charge of the matters hereinafter designated, and such other matters properly within the scope of the department, as shall be allotted to them by the commissioner of agriculture.

History: En. Sec. 8, Ch. 216, L. 1921; re-en. Sec. 3562, R. C. M. 1921.

Compiler's Note

The compiler has, pursuant to section 3-101.1, substituted "department of agriculture" for "department of agriculture, labor and industry" in this section.

3-109. (3563) **Divisions defined.** There shall be three main divisions of the department of agriculture, to wit:

"The division of farming and dairying."

"The division of grain standards and marketing."

"The division of horticulture."

The divisions hereby created are intended for the sole purpose of promoting the logical and convenient classification of the work of the department, and nothing herein contained shall be deemed to prevent any person engaged in the work of a particular division from performing the work of another division; the commissioner may likewise create additional divisions at his discretion.

History: En. Sec. 9, Ch. 216, L. 1921; re-en. Sec. 3563, R. C. M. 1921; amd. Sec. 7, Ch. 177, L. 1951.

Compiler's Note

The name of the division of horticulture has been changed to the "horticultural inspection and quarantine service." See sec. 3-109.1.

Cross-Reference

Division of wheat research and marketing created, sec. 3-2903 et seq.

3-109.1. Horticultural inspection and quarantine service. That the division of the department of agriculture heretofore referred to and usually

known and designated as the "division of horticulture" shall hereafter be known and designated as the "horticultural inspection and quarantine service," and wherever the term "division of horticulture" may appear or be used in any section of the Revised Codes of Montana, 1947, or any act amendatory thereof or supplemental thereto, it shall be deemed and construed to refer to and mean the "horticultural inspection and quarantine service"; provided, that such change in name shall not be construed so as to, in any manner whatever, impair or work a forfeiture of any property or rights of such division, or of the state of Montana.

History: En. Sec. 1, Ch. 97, L. 1953.

3-110. (3564) **Regulation of farming industry and allied subjects.** The department of agriculture, through its authorized agents and representatives, shall enforce all the laws of Montana now existing or hereafter enacted for the protection and regulation of the farming industry in Montana; it shall also make a special study of the conditions of farm life in Montana and the problems of marketing and distribution of farm products, and shall from time to time make recommendations to the governor concerning needed legislation upon such subjects; it shall enforce the provisions of sections 3-801 to 3-808 of this code, relating to purity of agricultural seeds, and of sections 3-1001 to 3-1005 of this code, relating to the eradication of the barberry plant, and of sections 3-1306 to 3-1308 of this code, relating to the control of insect pests and plant diseases, and for that purpose shall make proper and necessary rules and regulations.

History: En. Sec. 10, Ch. 216, L. 1921; re-en. Sec. 3564, R. C. M. 1921; amd. Sec. 1, Ch. 88, L. 1939.

Compiler's Note

The compiler has, pursuant to section 3-101.1, substituted "department of agriculture" for "department of agriculture, labor and industry" in this section.

References

Northern Montana Mustard Growers' Co-operative v. Britton, 128 M 553, 280 P 2d 1078, 1085.

3-110.1. Production of fur-bearing animals defined as agricultural pursuit. (1) The following are agricultural pursuits:

(a) The breeding, raising and producing in captivity of all fur-bearing animals.

(b) The marketing by the producer of these animals as live animals or as pelts.

(2) Such animals or pelts are agricultural products and any person engaged in the producing or marketing of such products is a farmer engaged in an agricultural pursuit, as generally expressed in Title 3, R. C. M. 1947.

(3) This act is not intended to alter the powers or duties of the state fish and game commission with respect to fur-bearing animals under existing statutes.

History: En. Sec. 1, Ch. 25, L. 1965.

3-111. (3565) **Regulation of farming industry and allied subjects—duties concerning poultry raising.** The division of farming and dairying shall investigate and bring to the attention of the public the value and importance of poultry raising in Montana, and shall publish for free distribution reports and bulletins pertaining to the advancement of poultry

husbandry. Said division shall also supervise and promote local poultry associations, and shall supervise the holding of an annual state poultry exhibition.

History: En. Sec. 11, Ch. 216, L. 1921; re-en. Sec. 3565, R. C. M. 1921.

3-112. (3567) **Separate division may be created.** The commissioner of agriculture may, in his discretion, create a separate division to have charge of the subject of poultry husbandry and apiculture.

History: En. Sec. 13, Ch. 216, L. 1921; re-en. Sec. 3567, R. C. M. 1921.

Collateral References
Agriculture⇐2.
3 C.J.S. Agriculture § 6.

3-113. (3572.1) **Deceit in grade, measure or test of milk and cream unlawful.** No person, firm or corporation selling or delivering milk or cream, and no person, firm, or corporation receiving or purchasing milk or cream by weight, grade or Babcock test, or either, or by measure, grade or Babcock test, or either, shall with intent to deceive or defraud as to the weight, grade, measure or Babcock test thereof; manipulate, change or alter such measure, Babcock test, grade or weight, or make or return to any person any false, inaccurate or untrue statement of such weight, grade, Babcock test or measure, or use any measure, grading or testing apparatus which does not comply with the standards of the department of agriculture or which has been condemned as inaccurate.

History: En. Sec. 1, Ch. 182, L. 1931; amd. Sec. 1, Ch. 169, L. 1933.

Collateral References
Food⇐4, 5.
36A C.J.S. Food §§ 14, 15.

3-114. (3572.2) **Penalty for violations—revocation of license.** Any person, firm or corporation who violates any of the provisions of section 3-113 shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than three hundred dollars ($300.00) or by imprisonment in the county jail for not more than two (2) months, or by both such fine and imprisonment. The commissioner of agriculture is also authorized and empowered to revoke any license issued by his department to any person, firm or corporation upon his or their conviction for violation of the provisions of this act.

History: En. Sec. 2, Ch. 182, L. 1931; amd. Sec. 2, Ch. 169, L. 1933.

Collateral References
Food⇐3, 12.
36A C.J.S. Food §§ 12, 21, 22, 26-28.

3-115. (3573) **The division of grain standards and marketing.** The department of agriculture, through the division of grain standards and marketing, shall enforce all the laws of the state of Montana concerning the handling, weighing, grading, inspection, storage and marketing of grain, and the management of public warehouses.

History: En. Sec. 19, Ch. 216, L. 1921; re-en. Sec. 3573, R. C. M. 1921.

Compiler's Note

The compiler has, pursuant to section 3-101.1, substituted "department of agriculture" for "department of agriculture, labor and industry" in this section.

Surety Company Not Relieved from Liability because Bean Warehouse Not Licensed or Regulated by State

Where a bond for the protection of those storing property in a bean warehouse was not conditioned on the licensing and supervision of the warehouse by the state and the surety company knew there was no

state law for the licensing, regulation, or supervision of bean warehouses, it is not relieved from liability because the warehouse was not licensed nor subject to supervision by the state. Fidelity & Deposit Co. of Maryland v. State of Montana, 92 F 2d 693, 697, affirming 16 F Supp 489.

CHAPTER 2

GRAIN STANDARDS—STORAGE AND INSPECTION—REGULATION OF GRAIN WAREHOUSEMEN

Section 3-201. Definitions.
3-202. Fees to be paid to state sealer of weights and measures.
3-203. Repealed.
3-204. Scale testing equipment to be transferred to department of agriculture.
3-205. Inspectors of grain—samplers and weighers—qualifications—interest.
3-206. Penalty for misconduct by inspectors.
3-207. Designation of inspection points—deputy inspectors.
3-208. Charges of public warehousemen.
3-209. Establishment of standard grain grades—procedure.
3-210. Rules governing dockage—sample inspection.
3-211. Cleaning apparatus to remove dockage—hearing—appointment of deputy inspectors.
3-212. Copies of grades, rules and regulations to be furnished warehousemen—display of same.
3-213. Fees for inspection and weighing grain.
3-214. Records of weighing and grading, certificate.
3-215. Removal of inspectors, samplers or weighers for misconduct.
3-216. Appeals to commissioner of agriculture—hearing and order.
3-217. Discrimination in charges by warehousemen prohibited.
3-218. Duty of warehousemen to receive grain—warehouse receipt.
3-219. Penalty for unlawful issue of warehouse receipt.
3-220. Regulation of sale and storage of grain—identity of grain in general storage.
3-221. Kind and quality of grain to be delivered on return of receipt.
3-222. Dispute as to grade or dockage—laboratory test to be made.
3-223. Date of termination of storage contracts evidenced by warehouse receipts.
3-224. Termination of storage contract—sale of grain for charges.
3-225. Disposal of grain without notice to department of agriculture and compliance with law forbidden—delivery of grain for warehouse receipts.
3-226. Possession by warehouseman considered bailment, when—prior right of warehouse receipt holder to grain.
3-227. Annual report of warehouseman, track buyer and grain dealer—special reports—penalty for failure to report.
3-228. Bond—license and fees of warehousemen, track buyer, grain dealer and others—penalty for operating without a license.
3-229. Protection of holders of warehouse receipts by intervention of department of agriculture—authority of department—action on bond—attorney general and county attorneys to assist.
3-230. Special inspection of grain.
3-231. Sampling grain.
3-232. Examination of grain cars at destination—license of grain weighers.
3-233. Fees—disposition.

3-201. (3574) **Definitions.** Whenever the word "grain" is mentioned in this act, it shall be construed to include flax. The term "public warehouse" includes any elevator, mill, warehouse, or structure in which grain is received from the public for storage, milling, shipment or handling. The term "public warehouseman" shall be held to mean and include every person, association, firm and corporation owning, controlling, or operating any public warehouse in which grain is stored or handled in such a manner that the grain of various owners is mixed together, and the identity

of the different lots or parcels is not preserved. The term "grain dealer" shall be held to mean and include every person, firm, association and corporation owning, controlling, or operating a truck, tractor-trailer unit, or warehouse, other than a public warehouse, and engaged in the business of buying grain for shipment or milling. The term "track buyer" shall mean and include every person, firm, association, and corporation who engages in the business of buying grain for shipment or milling, and who does not own, control, or operate a warehouse or public warehouse. The terms "agent," "broker," and "commission man" shall mean and include every person, association, firm and corporation who engages in the business of negotiating sales or contracts for grain or of making sales or purchases for a commission.

History: En. Sec. 20, Ch. 216, L. 1921; re-en. Sec. 3574, R. C. M. 1921; amd. Sec. 1, Ch. 41, L. 1923; amd. Sec. 1, Ch. 154, L. 1929; amd. Sec. 1, Ch. 35, L. 1933; amd. Sec. 1, Ch. 224, L. 1961.

References

American Surety Co. v. Butler, 86 M 584, 593, 284 P 1011; Whorley v. Patton-Kjose Co., Inc., 90 M 461, 477, 5 P 2d 210.

Collateral References

Warehousemen⇨2.

3-202. (3575.2) **Fees to be paid to state sealer of weights and measures.** It shall be the duty of each person, firm, copartnership, or corporation owning or in possession of a scale or scales to pay to the state sealer of weights and measures or his deputies at the time of each inspection of such scale or scales, the following inspection fees: For each railroad track scale the sum of fifteen ($15.00) dollars; grain shipping hopper scale with a capacity of forty thousand (40,000) pounds or over, twenty-five ($25.00) dollars; automatic or hopper shipping scale up to and including ten (10) ton capacity, eight ($8.00) dollars; wagon scale, truck scale, coal scale, dump scale, beet scale, and stock scale, up to and including ten (10) ton capacity, ten ($10.00) dollars, over ten (10) ton up to and including twenty (20) ton capacity, twelve ($12.00) dollars, two-section scale with a capacity over twenty (20) ton, twenty ($20.00) dollars; three (3) or more section twenty (20) ton and over capacity, twenty-five ($25.00) dollars; for each dormant platform scale up to thirty-five hundred (3500) pounds, meat track scale and dial scale with a capacity of five hundred (500) pounds to one thousand (1,000) pounds, two ($2.00) dollars; built-in warehouse scales with a capacity from thirty-five hundred (3500) pounds to ten thousand (10,000) pounds capacity, five ($5.00) dollars each portable scale, hanging scale and commercial person weighing scale, two ($2.00) dollars; grain testers and other small scales used for weighing and testing grain in grain elevators, or warehouses, fifty (50¢) cents; all counter scales with a capacity of one (1) to ten (10) pounds, fifty (50¢) cents; all counter scales with a capacity of over ten (10) pounds, one dollar and twenty-five cents ($1.25).

Where fees are not paid within thirty (30) days after inspection, there shall be an added charge of fifty per cent (50%) of the inspection fee and the equipment will be sealed and removed from service by the sealer of weights and measures or his deputies, until such fees have been paid.

Anyone found using a weighing device or petroleum measuring device or removing the said seal before all inspection fees have been paid, shall

upon conviction, be deemed guilty of a misdemeanor and shall be subject to a fine of not less than ten ($10.00) dollars nor more than one hundred ($100.00) dollars.

The sealer of weights and measures, shall by proper regulation, fix inspection fees for any scales, weights, measures, weighing and computing devices and for special services not covered by the foregoing schedule of fees.

History: En. Sec. 2, Ch. 124, L. 1927; amd. Sec. 2, Ch. 31, L. 1933; amd. Sec. 2, Ch. 146, L. 1939; amd. Sec. 1, Ch. 109, L. 1945; amd. Sec. 1, Ch. 163, L. 1947; amd. Sec. 1, Ch. 89, L. 1953; amd. Sec. 1, Ch. 85, L. 1957; amd. Sec. 1, Ch. 145, L. 1961.

Collateral References

Weights and Measures⚷8.
94 C.J.S. Weights and Measures § 6.

3-203. (3575.3) **Repealed—Chapter 147, Laws of 1963.**

Repeal

This section (Sec. 3, Ch. 124, L. 1927; Sec. 3, Ch. 146, L. 1939), relating to the expenses of the state sealer of weights and measures and his deputies, was repealed by Sec. 242, Ch. 147, Laws 1963.

3-204. (3575.8) **Scale testing equipment to be transferred to department of agriculture.** All equipment in possession of the secretary of state of Montana, for the purpose of calibrating test weights, shall be transferred to the department of agriculture, for use in the scale testing department.

History: En. as Sec. 7-A, Ch. 124, L. 1927, by Sec. 4, Ch. 31, L. 1933.

3-205. (3576) **Inspectors of grain—samplers and weighers—qualifications—interest.** The commissioner of agriculture shall appoint a chief inspector of grain for the state, who shall also serve as chief weigher of grain for the state, and such number of inspectors, samplers and weighers as may be necessary to properly and thoroughly enforce the provisions of this act. At all inspection points designated by the commissioner he shall provide sufficient inspectors and weighers to inspect and weigh all grain subject to state inspection, under the supervision of the chief inspector; provided, however, that grain held in transit for inspection and diversion only, need not be weighed. Such chief inspector and inspectors shall be able to qualify under the terms and in accordance with the United States Federal Grain Standards Act. No chief inspector, inspector, sampler or weigher shall be interested directly or indirectly in the handling, sorting, shipping, purchasing or selling of grain or grain products.

History: En. Sec. 22, Ch. 216, L. 1921; re-en. Sec. 3576, R. C. M. 1921; amd. Sec. 2, Ch. 154, L. 1929; amd. Sec. 1, Ch. 7, L. 1957; amd. Sec. 10, Ch. 177, L. 1965.

Cross-Reference

Bonds of state officers and employees, sec. 6-105 et seq.

Collateral References

Inspection⚷4.
44 C.J.S. Inspection § 9.

3-206. (3577) **Penalty for misconduct by inspectors.** Any inspector, sampler, or weigher, who shall be guilty of any neglect of duty, or who shall knowingly or carelessly inspect, sample, or weigh any grain, or who shall, directly or indirectly, accept any money or other consideration for

any neglect of duty or any improper performance of duty as such inspector, sampler, or weigher, or any person, persons, corporation, or agent, who shall improperly influence, or attempt to improperly influence, any inspector, sampler, or weigher in the performance of his duties, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court.

History: En. Sec. 23, Ch. 216, L. 1921; re-en. Sec. 3577, R. C. M. 1921.

3-207. (3578) **Designation of inspection points — deputy inspectors.** Such cities and towns where grain is received in carload lots may be designated by the commissioner of agriculture as inspection points, and be provided with state inspection and weighing; provided, that the expenditures for the inspection and weighing at the points designated by the commissioner shall not exceed the receipts of fees at such point or points. The commissioner may also assign deputy inspectors to such territory or portions of the state as it may determine to be necessary and it shall be the duty of such deputy inspectors to inspect grain delivered in less than carload lots in such territory or portions of the state to which they may be assigned, to furnish producers within such territory or portions of the state with such inspection as shall enable them to determine the grade of their grain, and to perform such other duties as the commissioner may prescribe.

History: En. Sec. 24, Ch. 216, L. 1921; re-en. Sec. 3578, R. C. M. 1921.

Collateral References

Inspection⊂=4, 5.

44 C.J.S. Inspection §§ 5-8, 10, 11.

3-208. (3579) **Charges of public warehousemen.** Charges must be made by all public warehousemen subject to the provisions of this act, for the handling or storage of grain, as follows:

(a) Not to exceed four cents (4¢) per bushel for receiving, elevating, weighing, and immediate delivery on car of the identical grain without mixing. Immediate delivery shall mean that the total period of assemblage and delivery does not exceed seventy-two (72) hours.

(b) Four cents (4¢) per bushel for all grains except flax, for receiving, grading, weighing, elevating, insuring, fifteen (15) days or part thereof free storage, and delivering to the owner. For flax this charge shall be five cents (5¢) per bushel.

(c) Not to exceed five cents (5¢) per bushel for cleaning grain at request of owner where there are cleaning facilities, in which case screenings shall be delivered to owner.

(d) The charges for storage shall be: one-thirtieth of one cent per bushel for each day in storage after period of free storage has elapsed.

(e) Twenty-five per cent (25%) reduction for the above charges shall be allowed when the market price of wheat being sold at point of origin at time of sale is less than fifty cents (50¢) per bushel.

(f) The schedule of charges for cleaning shall be posted in a conspicuous place where grain is unloaded for cleaning.

Failure on the part of any public warehouseman to comply with the provisions of this act will render the licenses of such warehouseman subject to revocation and cancellation by the commissioner of agriculture.

History: En. Sec. 25, Ch. 216, L. 1921; re-en. Sec. 3579, R. C. M. 1921; amd. Sec. 3, Ch. 154, L. 1929; amd. Sec. 2, Ch. 35, L. 1933; amd. Sec. 1, Ch. 6, L. 1957.

Definition of Wheat

"Wheat" as used in the storage act in determining the storage charges connotes wheat of the highest grade. Opinions of Attorney General, Vol. 15, No. 154.

Waiver of Storage

Plaintiff delivered a quantity of grain to an elevator. Three months later he sold it to the elevator company; at that time, while section 3-217 requires the warehouseman to charge storage, and this section prescribes the penalty for failure to do so, none was charged when the sale was made. In an action to recover the balance of the sale price due, the buyer contended that no storage having been charged, the contract of sale was invalid as against public policy. Held, that the contract of storage, one of bailment and the contract of sale were separate and distinct contracts, and in the absence of proof that the waiver of storage was an inducement for the sale, the latter transaction was valid. Spurgeon v. Imperial Elevator Co., 99 M 432, 43 P 2d 891.

References

Rocky Mountain Elevator Co. v. Bammel, 106 M 407, 414, 81 P 2d 673.

Collateral References

Warehousemen⇨27.

93 C.J.S. Warehousemen and Safe Depositaries § 61.

3-209. (3580) **Establishment of standard grain grades — procedure.** The commissioner of agriculture shall fix and establish standard grades to apply to all grain bought or handled by public warehouses in this state. The commissioner of agriculture shall adopt as state grade standards all grades for grain now or hereafter established by the United States department of agriculture. Standards for grain, other than those fixed as above, shall be established by the commissioner of agriculture after due notice and public hearing, notice thereof to be given by publication in three newspapers of the state, at least ten days prior to such hearing.

Grade standards, or any alteration or modification of such standards which the commissioner of agriculture may establish, shall not become effective within thirty days after publication, except in the case of grades established by the United States department of agriculture, which shall become effective ten days after publication.

All interested persons desiring to be heard shall be permitted to give testimony, and such other witnesses may be subpoenaed as the commissioner of agriculture may deem necessary, which witnesses shall be entitled to the same fees and mileage as are provided for witnesses in civil actions, and shall be paid out of the fund created by the provisions of this act. Such grain standards shall not apply to grain contracted for previous to their disposition.

History: Enacted as part of Sec. 26, Ch. 216, L. 1921; re-en. Sec. 3580, R. C. M. 1921.

3-210. (3580) **Rules governing dockage—sample inspection.** The commissioner of agriculture shall, after such hearing, make and issue reasonable rules and regulations governing the dockage, which shall be made on inferior grades and in all executory contracts thereafter entered into; provided, that the same shall not conflict with the terms of the United States Federal Grain Standard Act. Where the price or amount to be paid there-

for depends upon terminal weight or grade, such rules and regulations shall control the dockage in so far as the same affects the price to be paid, and such rules and regulations shall become part of the contract of sale. The commissioner of agriculture shall also make provisions for sample inspection of grain, make rules and regulations governing same and provide that such inspection when made shall be final.

History: Enacted as part of Sec. 26, Ch. 216, L. 1921; re-en. Sec. 3580, R. C. M. 1921.

3-211. (3580) **Cleaning apparatus to remove dockage—hearing—appointment of deputy inspectors.** The commissioner of agriculture shall have power to require, after personal notice of not less than thirty days served upon any warehouseman and a public hearing, cleaning apparatus to be established where none now exists to remove dockage and the return of same to the owner, or its equivalent in value, less cleaning charges, which may be fixed by the commissioner of agriculture.

The commissioner of agriculture shall, during the grain-marketing season, appoint such deputy inspectors as he deems necessary to visit the grain-growing districts for the purpose of investigating grain grading, dockage, and weighing, and enforcing the rules and regulations laid down by the commissioner.

History: Enacted as part of Sec. 26, Ch. 216, L. 1921; re-en. Sec. 3580, R. C. M. 1921.

3-212. (3580) **Copies of grades, rules and regulations to be furnished warehousemen—display of same.** It shall be the duty of the commissioner of agriculture, immediately after the establishment of such grades, and the promulgation of rules and regulations fixing dockage, as herein provided, to supply all public warehousemen which the records of his office show are then or thereafter engaged in operating such warehouses, with a copy of such grades, rules, and regulations. It shall be the duty of every public warehouseman to keep such copy on file in a convenient place in every such warehouse, and if an office is maintained in connection with such warehouse, a copy of such grades, rules and regulations shall be kept on file in such office, and a placard notice posted in a conspicuous place in every such warehouse and such office, reading as follows: "A copy of Montana grades, rules, and regulations is on file here for information of interested parties."

Every such warehouseman shall exhibit such copy of grades, rules, and regulations to any interested party applying therefor at any such warehouse or office, and permit such interested party to examine and consult such copy.

History: Enacted as part of Sec. 26, Ch. 216, L. 1921; re-en. Sec. 3580, R. C. M. 1921.

Collateral References

Agriculture⇦2; Inspection⇦3.

3 C.J.S. Agriculture § 6; 44 C.J.S. Inspection § 4.

3-213. (3581) **Fees for inspection and weighing grain.** The commissioner of agriculture shall fix the fees for inspection and weighing of grain, and such fees shall be a lien upon such grain until paid.

No commercial laboratory for public service shall certify to the grade or protein content of grain unless such commercial laboratory is licensed by the commissioner of agriculture under such rules and regulations as he may prescribe.

History: En. Sec. 27, Ch. 216, L. 1921; re-en. Sec. 3581, R. C. M. 1921; amd. Sec. 4, Ch. 154, L. 1929.

Cross-Reference

Fees, disposition, use, sec. 3-233.

Collateral References

Inspection⇦6; Weights and Measures ⇦8.

44 C.J.S. Inspection § 12.

3-214. (3582) **Records of weighing and grading, certificate.** The inspectors, samplers and weighers shall, at places provided for state inspection, have exclusive control of the weighing and grading of grain to be inspected, and the certificates of such officers relative to such weighing and grading, shall be conclusive upon all parties interested. Suitable books and records shall be kept, in which shall be entered a faithful and true record of every carload or truckload of grain inspected or weighed by them, and showing the number of and initial or other designation of the car or truck containing such load, its weight, the kind of grain and its grade, and if graded below standard No. 1 grade, the reason for such grade, the amount of dockage, the amount of fees and forfeitures and disposition of the same. For each car or truckload of grain the inspector shall give a certificate of inspection, showing the kind and grade of the same and the reason for all grades below No. 1, and the amount to be allowed for dockage, if any. For each car or truckload weighed the weigher shall give a weight certificate showing the true weight thereof, and containing a statement showing the condition of the car or truck and evidences of leakage or damage, if any. Such inspection and weight certificates shall be made available to the warehouse loading or unloading the grain, the shipper or his agent, and the railroad company, or other carrier over which the grain was shipped or carried; provided, however, that nothing in this section shall be construed to require grading or weighing by state inspectors and weighers of local deliveries of grain in trucks by the producers thereof. Inspectors and weighers shall also keep a true record of all appeals, decisions, and a complete record of every official act, which books and records shall be open to inspection by any party in interest.

History: En. Sec. 28, Ch. 216, L. 1921; re-en. Sec. 3582, R. C. M. 1921; amd. Sec. 2, Ch. 7, L. 1957.

Collateral References

Weights and Measures⇦1-3.

94 C.J.S. Weights and Measures § 3.

3-215. (3583) **Removal of inspectors, samplers or weighers for misconduct.** Upon written complaint filed with the commissioner of agriculture, charging an inspector, sampler, or weigher with official misconduct, inefficiency, incompetency, or neglect of duty, the commissioner of agriculture shall investigate such charges, and, if it be found sustained, shall remove such officer.

History: En. Sec. 29, Ch. 216, L. 1921; re-en. Sec. 3583, R. C. M. 1921.

Collateral References

Inspection⇦4; Weights and Measures ⇦8.

44 C.J.S. Inspection §§ 10, 11.

3-216. (3584) **Appeals to commissioner of agriculture — hearing and order.** In case any owner, consignee, or shipper of grain, or any warehouseman, shall be aggrieved at the grading of such commodity, such aggrieved person may appeal to the commissioner of agriculture from such decision within ten days from the date of certificate, by giving notice of appeal and paying a fee to be fixed by the commissioner of agriculture, which shall be refunded if the decision appealed from is sustained. Such notice of appeal may be given by letter or notice to the commissioner of agriculture, stating that such party appeals from the decision of the inspector, and specifying the initials and numbers of the cars in which such grain was contained when inspected and graded.

The appellant shall also file with the commissioner of agriculture a list containing the names and addresses of all parties interested in the subject matter. It shall be the duty of the commissioner of agriculture, upon receiving such notice and list of interested parties, to immediately notify the parties interested of the time and place designated by it for a hearing, and at such time and place, which shall be five days from the date of receiving such notice, hold a hearing and inquire into the reasonableness and correctness of such original grading, and such evidence shall be received as parties thereto may desire to offer. After such hearing, the commissioner of agriculture shall make such order affirming or modifying the grade so established by the inspector as the facts and evidence may justify.

History: En. Sec. 30, Ch. 216, L. 1921; re-en. Sec. 3584, R. C. M. 1921.

Collateral References

Inspection⇐5.

44 C.J.S. Inspection §§ 5-8.

3-217. (3585) **Discrimination in charges by warehousemen prohibited.** If any public warehouseman subject to the provisions of this act shall, directly or indirectly, by any special charge, rebate, drawback, or other device, demand, collect, or receive from any person, or persons, a greater or lesser compensation for any service rendered, or to be rendered, in the handling or storage of grain, than he demands, collects, or receives from any other person or persons for a like and contemporaneous service in the handling or storage of grain, under substantially similar circumstances or conditions, or if any such public warehouseman shall make or give any undue or unreasonable preference or advantage to any person, company, or corporation in any respect whatever, or shall subject any particular person, company, firm, or corporation, to any undue or unreasonable prejudice or disadvantage, in any respect whatsoever, such warehouseman shall be subject to a penalty as herein provided.

History: En. Sec. 25, Ch. 209, L. 1919; re-en. Sec. 3585, R. C. M. 1921.

Waiver of Storage

Plaintiff delivered a quantity of grain to an elevator. Three months later he sold it to the elevator company; at that time, while this section requires the warehouseman to charge storage, and section 3-208 prescribes the penalty for failure to do so, none was charged when the sale was made. In an action to recover the balance of the sale price due, the buyer contended that no storage having been charged, the contract of sale was invalid as against public policy. Held, that the contract of storage, one of bailment, and the contract of sale were separate and distinct contracts, and in the absence of proof that the waiver of storage was an inducement for the sale, the latter transaction was valid. Spurgeon v. Imperial Elevator Co., 99 M 432, 43 P 2d 891.

Collateral References

Warehousemen⇐27.

3-218. (3586) **Duty of warehousemen to receive grain—warehouse receipt.** Every public warehouseman shall receive for storage and shipment without discrimination of any kind, so far as the capacity of his warehouse will permit, all grain tendered him in the usual course of business in suitable conditions for storage. A warehouse receipt, in form prescribed by law and the rules and regulations of the commissioner of agriculture, shall be issued and delivered to the owner, or his representative, immediately upon receipt of such load or parcel of grain.

History: En. Sec. 26, Ch. 209, L. 1919; re-en. Sec. 31, Ch. 216, L. 1921; re-en. Sec. 3586, R. C. M. 1921.

Bailment

An operator of a grain elevator is a public warehouseman; delivery of grain for storage constitutes a bailment, and as bailee he must, under the Montana law, at all times keep on hand in bonded warehouses sufficient grain to make redelivery on all storage receipts, and may not sell or deliver it out of storage except as provided by law; he may not use it for purposes of speculation on the market. Whorley v. Patton-Kjose Co., Inc., 90 M 461, 477, 5 P 2d 210.

Judicial Notice

The law presumes that the commissioner of agriculture performed his official duty as required by this section and that the form of warehouse receipt used and issued by plaintiff is in the form prescribed by law and the rules and regulations of the commissioner of agriculture of which law and official acts this court may take judicial notice. Northern Montana Mustard Growers' Co-operative v. Britton, 128 M 553, 280 P 2d 1078, 1085.

References

Stites v. Montana & Dakota Grain Co., 86 M 559, 561, 284 P 536.

Collateral References

56 Am. Jur. 313 et seq., Warehouses.

Liability of warehouseman for damage to, or destruction of, property by fire. 16 ALR 280.

Deposit of grain without obligation to return identical grain as a bailment or a sale. 54 ALR 1166.

Legal effect of transaction by which grain or other commodity is received for storage by one who has not complied with statutory conditions necessary to become a public warehouseman. 108 ALR 928.

Storage contract as a bailment of chattels or lease of place where chattels are stored. 138 ALR 1137.

Liability of warehouseman for deterioration of goods due to improper temperature. 92 ALR 2d 1298.

3-219. (3587) **Penalty for unlawful issue of warehouse receipt.** It shall be unlawful for any public grain warehouseman to issue a receipt for grain, except on the actual delivery of the grain into the warehouse, or to issue a warehouse receipt for a greater amount of grain than that actually received.

Any person violating any of the provisions of this section, and any grain inspector knowingly permitting any grain to be delivered contrary to the provisions of this section, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail not less than thirty days nor more than six months.

History: En. Sec. 28, Ch. 209, L. 1919; re-en. Sec. 3587, R. C. M. 1921.

References

Stites v. Montana & Dakota Grain Co., 86 M 559, 561, 284 P 536.

Collateral References

Warehousemen⊂⇒36.

3-220. (3588) **Regulation of sale and storage of grain—identity of grain in general storage.** In cases of grain being sold outright to the warehouseman at the time of delivery or grain placed in store with the ware-

houseman to be sold at a future time to the warehouseman to whom delivered, settlement shall be made on the basis of grade, quality, protein content and quantity. In cases of storage of grain with intent of future redelivery of the grain the owner must so designate at time of delivery to enable the warehouseman to special bin. Failure to so designate at time of delivery, the grain will lose its identity in general storage. Therefore, owner agrees to accept quantity of like grade, kind and quality (as provided for under the United States Federal Grain Standards Act) from warehouseman's general storage.

History: En. Sec. 32, Ch. 216, L. 1921; re-en. Sec. 3588, R. C. M. 1921; amd. Sec. 3, Ch. 41, L. 1923; amd. Sec. 1, Ch. 174, L. 1925; amd. Sec. 5, Ch. 154, L. 1929; amd. Sec. 3, Ch. 35, L. 1933.

NOTE.—Sections 3-220 to 3-224 were originally enacted as single section, Sec. 32, Ch. 216, L. 1921, and appeared as Sec. 3588, R. C. M. 1935. That section has been divided for more convenient reference.

3-221. (3588) **Kind and quality of grain to be delivered on return of receipt.** Upon the return of the receipt to the proper warehouseman, properly endorsed, and upon payment or tender of all advances and legal charges, grain of grade agreed upon, of equal quality or value and quantity equal to that placed by him in store shall be delivered to the holder of such receipt within forty-eight hours after the facilities for receiving the same have been provided, or at the option of the owner such warehouseman shall deliver such grain at terminal, or if mutually agreed, the equivalent market value thereof on said date, less any freight and storage charges to terminal, and such other charges as may be allowed by the commissioner of agriculture. Owners of warehouse receipts surrendered for shipment shall furnish the warehouseman with written instructions regarding the capacity of cars to be ordered from the transportation company, and as to the manner of loading and billing shipments made in such cars as are furnished by the transportation company. The warehouseman shall load and bill all such shipments in exact accordance with instructions given, and shall be liable to the owner of the warehouse receipt so surrendered for the amount of any excess freight paid, or for other damages suffered by the owner of the warehouse receipt, resulting from the failure of the warehouseman to follow accurately the loading and billing instructions as given him, provided that the owner of said warehouse receipt shall immediately furnish to said warehouseman a duplicate copy of the original state weighmaster's certificate of weight of said carlot shipment at terminal.

History: See history of section 3-220 and Note.

3-222. (3588) **Dispute as to grade or dockage—laboratory test to be made.** If any dispute or disagreement arises between the party receiving and the party delivering the grain at any public warehouse in this state as to the proper grade or dockage, or both, of any grain, in accordance with standards at terminal points, an agreed average sample of at least one quart of said grain in dispute may be taken by the parties interested, and forwarded in an air-tight tin container duly marked for identification by the interested parties, mail or express charges prepaid, with the names and addresses of the parties, to the chief grain inspector, Great Falls, Montana, or any state laboratory whose chief inspector has been qualified by the

United States department of agriculture to grade grain, and make laboratory tests for protein, who will, upon request, examine said grain and adjudge what grade said sample is entitled to under the inspection rules and which amount of dockage it contains, and the findings of such inspection shall be binding upon both parties, subject to appeal, as hereinafter provided. If the grain in question is damp, musty, or otherwise out of condition, this fact, with any other necessary information, must accompany sample.

History: See history of section 3-220 and Note.

3-223. (3588) **Date of termination of storage contracts evidenced by warehouse receipts.** All storage contracts on grain in store in public local grain warehouses, as evidenced by a warehouse receipt, shall terminate on June thirtieth of each year.

History: See history of section 3-220 and Note.

Mustard Seed as Grain

Mustard seed is a grain and subject to the provisions of this section and section 3-224. Northern Montana Mustard Growers' Co-operative v. Britton, 128 M 553, 280 P 2d 1078, 1085.

3-224. (3588) **Termination of storage contract — sale of grain for charges.** Storage on any or all grain may be terminated by the owner at any time before the date mentioned herein by the payment or tender of all legal charges and the surrender of the storage receipt, together with a demand for delivery of such grain, or notice to warehouseman to sell the same. In the absence of a demand for delivery, order to sell, or mutual agreement for the renewal of the storage contract entered into prior to the expiration of the storage contract, as prescribed in this act, the warehouseman shall, upon the expiration of the storage contract, sell so much of such stored grain at the local market price on the close of business on said day as is sufficient to pay the accrued storage charges, and shall thereupon issue new storage tickets for the balance of the grain to the owner thereof upon surrender by him of the original storage receipts. Provided, further, that it shall be the duty of the warehouseman on the first day of June of each year to notice all storage ticket holders at their last known address of the provisions of this act.

History: See history of section 3-220 and Note.

References

American Surety Co. of New York v. Butler, 86 M 584, 593, 284 P 1011; Whorley v. Patton-Kjose Co., Inc., 90 M 461, 477, 5 P 2d 210; Northern Montana Mustard Growers' Co-operative v. Britton, 128 M 553, 280 P 2d 1078, 1085.

Collateral References

Warehousemen⇐19, 25 (4), 27.

3-225. (3588.1) **Disposal of grain without notice to department of agriculture and compliance with law forbidden—delivery of grain for warehouse receipts.** No such warehouseman shall sell or otherwise dispose of, or deliver out of store, except to the owner, any stored grain, except upon notice, in advance, to the department of agriculture, and after complying in full with the laws of the state and the regulations of the department of agriculture relating to the handling of stored grain. Any person, firm, association or corporation owning or operating more than one public ware-

house in this state shall be permitted to make delivery of wheat from one warehouse in settlement of warehouse receipts issued for grain stored in another warehouse, when grain for storage has been presented at any warehouse in excess of its available storage capacity. Provided, that this shall not be construed as conferring upon such warehouseman a right to make delivery of grain of substantially lower value than that delivered for store, though of the same technical grade, in settlement of warehouse receipts; and provided further, that such warehouseman shall, at all times, keep on hand in bonded warehouses grain of quality and quantity sufficient to settle all outstanding storage receipts. Provided, further, that freight and other charges shall be figured on the basis of the point of receipt.

History: En. Sec. 3588-A, R. C. M. 1921, by Sec. 4, Ch. 41, L. 1923.

References

Whorley v. Patton-Kjose Co., Inc., 90 M 461, 477, 5 P 2d 210; Department of Agriculture, Labor and Industry v. DeVore, 91 M 47, 6 P 2d 125.

Collateral References

Warehousemen⇨25 (7).

3-226. (3588.2) **Possession by warehouseman considered bailment, when—prior right of warehouse receipt holder to grain.** Whenever any grain shall be delivered to any person, association, firm or corporation doing a grain, warehouse or grain elevator business in this state, and the receipt issued therefor provides for the delivery of a like amount and kind, grade and quality to the holder thereof in return, such delivery shall be a bailment and not a sale of the grain so delivered, and in no case shall the grain so stored be liable to seizure upon process of any court in an action against such bailee, except action by owners of such warehouse receipts to enforce the terms thereof, but such grain shall at all times in the event of failure or insolvency of such bailee be first applied exclusively to the redemption of outstanding storage warehouse receipts for grain so stored with such bailee.

History: En. Sec. 3588-B, R. C. M. 1921, by Sec. 4, Ch. 41, L. 1923; amd. Sec. 11-101, Ch. 264, L. 1963.

References

Department of Agriculture, Labor and Industry v. DeVore, 91 M 47, 6 P 2d 125.

Collateral References

Warehousemen⇨16.

Deposit of grain without obligation to return identical grain as a bailment or a sale. 54 ALR 1166.

Storage contract as a bailment of chattels or lease of place where chattels are stored. 138 ALR 1137.

3-227. (3589) **Annual report of warehouseman, track buyer and grain dealer—special reports—penalty for failure to report.** On June thirtieth of each year every warehouseman, track buyer and grain dealer shall make report, under oath to the commissioner of agriculture, on blanks or forms prepared by him, showing the total weight of each kind of grain received and shipped from or by such warehouseman, track buyer and licensed grain dealer under the laws of Montana, and also the amount of outstanding storage receipts on said date, and a statement of the amount of grain on hand to cover the same. The commissioner of agriculture may also require special reports from such warehouseman, grain dealer or track buyer at such times as the commissioner may deem expedient. The commissioner may cause the business of every warehouseman, track buyer and

grain dealer and the mode of conducting the same to be inspected by his authorized agent, whenever deemed proper, and the books, accounts, records, papers and proceedings of every such warehouseman, track buyer and grain dealer shall at all times during business hours be subject to such inspection. Any person, firm, or corporation, who shall knowingly falsify any of its reports to the department of agriculture, or who shall refuse or fail to make such reports when requested to do so by the commissioner of agriculture or his agents, or who shall refuse or resist inspection as provided in this section, shall be guilty of a misdemeanor and be punished by a fine of not less than three hundred dollars ($300.00), nor more than five hundred dollars ($500.00).

History: En. Sec. 33, Ch. 216, L. 1921; re-en. Sec. 3589, R. C. M. 1921; amd. Sec. 5, Ch. 41, L. 1923; amd. Sec. 2, Ch. 224, L. 1961.

NOTE.—This section and section 3-228 which were originally a single section have been divided for more convenient reference.

Bond of Track Buyer

Indemnitors who assumed liability for losses sustained by a surety on a track buyer's bond (a track buyer being one engaged in the buying of grain for shipment or milling in carload lots but not operating a warehouse) under the impression that it was the bond required by this section, before amendment, which then did not make it the duty of a track buyer to pay the market price therefor as it did in the case of warehousemen. The bond executed as required by the state commissioner of agriculture, and of the contents of which the indemnitors were ignorant, was a common-law bond containing the provision that the surety would undertake to pay in full for all grain purchased if the track buyer failed to pay. The indemnity agreement contained a provision rendering the signers liable for all sums the surety would be required to pay under the bond. The track buyer went into bankruptcy; sellers of grain brought suit on the bond for moneys due them from the track buyers and had judgment. Held, in an action by the surety to recover upon the indemnity agreement, that since the bond was not the statutory track buyer's bond, but a common-law bond executed after the indemnity agreement had been entered into, and the indemnitors did not intend to indemnify against loss for failure of the track buyer to pay for grain and the statute did not make it his duty to do so, there was no meeting of minds as to the indemnity, therefore no contract in that behalf, and judgment for plaintiff surety was erroneous. American Surety Co. v. Butler, 86 M 584, 587, 284 P 1011.

Legislative construction of a former statute is persuasive but will only be adopted when clearly expressed; but if in amending a former act upon the erroneous assumption that it contained a provision it did not, courts are at liberty to disregard such construction; hence the contention that, while this section did not contain a provision that a track buyer's bond should cover his faithful performance of his duty to pay for grain bought, by including track buyers in the provision imposing that duty upon warehousemen when it amended this section (ch. 42, Laws 1925), it construed the original act as requiring that duty with relation to track buyers, has no merit. American Surety Co. v. Butler, 86 M 584, 587, 284 P 1011.

The purpose of the legislature in enacting chapter 42, Laws of 1925 (3-229), was to authorize the state department of agriculture to do whatever is "lawful and needful" to have the proceeds of stored grain, upon insolvency of the warehouseman, applied to the redemption of storage tickets, and, when such proceeds are exhausted and there still remains a balance due them, to demand payment of the bond provided for in this section; if this shall prove insufficient to discharge the indebtedness, the holders of such tickets stand upon the same footing as do other creditors of the warehouseman. Department of Agriculture, Labor and Industry v. DeVore, 91 M 47, 51, 6 P 2d 125.

Collateral References

Warehousemen⇨6, 7, 18, 36.

3-228. (3589) **Bond—license and fees of warehouseman, track buyer, grain dealer and others—penalty for operating without a license.** Each person, firm, corporation or association or persons operating any public warehouse or warehouses subject to the provisions of this act, and every track buyer, grain dealer, broker, or commission man, or person or asso-

ciation of persons, merchandising in grain shall, on or before the first day of July each year, give a bond executed by a corporate surety authorized to do business in the state of Montana to the state of Montana, in such sum as the commissioner may require, conditioned upon the faithful performance of the acts and duties enjoined upon them by section 3-229, Revised Codes of Montana, 1947. Provided, however, that where a truck, tractor-trailer owner or operator purchasing grain in Montana for the first time for cash or by certified check, the bond provided for in this act shall not be required.

Every person or persons, firm, copartnership, corporation, or association of persons, operating any public warehouse or warehouses, and every track buyer, grain dealer, broker, commission man, person or association of persons merchandising grain in the state of Montana, shall, on or before the first day of July of each year, pay to the state treasurer of Montana a license fee in the sum of fifteen dollars ($15.00) for each and every warehouse, elevator, truck, tractor-trailer unit, or other place, owned, conducted, or operated by such person or persons, firm, copartnership, corporation or association of persons, where or in which grain is received, stored and or shipped, and upon the payment of such fee of fifteen dollars ($15.00) for each and every warehouse, elevator, truck, tractor-trailer unit, or other place, where or in which grain is merchandised within the state of Montana, the commissioner of agriculture shall issue to such person or persons, firm, copartnership, corporation or association of persons, a license to engage in grain merchandising at the place or with the licensed units designated within the state of Montana, for a period of one (1) year save only that a public warehouseman shall be permitted to deliver grain previously stored with him, and save further that a producer may be permitted to deliver his own grain. And save further that a producer may buy and haul grain for his own use and that of his neighbors in his community, and save further that the operator of a feed lot in the state of Montana may buy and haul grain for use on his own lot. Any person, firm, association or corporation who shall engage in or carry on any business or occupation for which a license is required by this act without first having procured a license therefor, or who shall continue to engage in or carry on any such business or occupation after such license has been revoked, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than three hundred dollars ($300.00) nor more than five hundred dollars ($500.00), and each and every day that such business or occupation is so carried on or engaged in shall be a separate offense.

In addition to the bond and license fee, a public warehouseman shall carry adequate insurance approved by the commissioner of agriculture to protect the holders of warehouse receipts from loss. A public warehouseman license shall not be issued or may be revoked for failure to comply with this insurance requirement.

History: En. Sec. 33, Ch. 216, L. 1921; re-en. Sec. 3589, R. C. M. 1921; amd. Sec. 5, Ch. 41, L. 1923; amd. Sec. 1, Ch. 145, L. 1959; amd. Sec. 3, Ch. 224, L. 1961; amd. Sec. 1, Ch. 27, L. 1963.

References

Kohles v. St. Paul Fire & Marine Ins. Co., 144 M 395, 396 P 2d 724, 726; State ex rel. Farmers Elevator Co. of Reserve v. District Court, 147 M 72, 410 P 2d 160.

3-229. (3589.1) **Protection of holders of warehouse receipts by intervention of department of agriculture—authority of department—action on bond—attorney general and county attorneys to assist.** Whenever any warehouseman, grain dealer, track buyer, broker, agent or commission man is found to be in a position where he cannot, or where there is a probability that he will not meet in full all storage obligations or other obligations resulting from the delivery of grain, it shall be the duty of the department of agriculture, through the division of grain standards, to intervene in the interests of the holders of warehouse receipts or other evidences of delivery of grain for which payment has not been made, and the department of agriculture shall have authority to do any and all things lawful and needful for the protection of the interests of the holders of warehouse receipts or other evidences of the delivery of grain for which payment has not been made, and when examination by the department of agriculture shall disclose that for any reason it is impossible for any warehouseman, grain dealer, track buyer, broker, agent or commission man to settle in full for all outstanding warehouse receipts or other evidences of delivery of grain for which payment has not been made, without having recourse upon the bond filed by said warehouseman, grain dealer, track buyer, broker, agent or commission man, it shall then be the duty of the department of agriculture for the use and benefit of holders of such unpaid warehouse receipts or other evidences of the delivery of grain for which payment has not been made, to demand payment of its undertaking by the surety upon the bond in such amount as may be necessary for full settlement of warehouse receipts or other evidences of delivery of grain for which payment has not been made. It shall be the duty of the attorney general or any county attorney of this state to represent the department of agriculture in any necessary action against such bond when facts constituting grounds for action are laid before him by the department of agriculture.

History: En. Sec. 3589-A, R. C. M. 1921, by Sec. 6, Ch. 41, L. 1923; amd. Sec. 1, Ch. 42, L. 1925.

Bond of Track Buyer

Legislative construction of a former statute is persuasive but will only be adopted when clearly expressed; but if in amending a former act upon the erroneous assumption that it contained a provision it did not, courts are at liberty to disregard such construction; hence the contention that, while sections 3-227 and 3-228 above, did not contain a provision that a track buyer's bond should cover his faithful performance of his duty to pay for grain bought, by including track buyers in the provision imposing that duty upon warehousemen when it amended said section by adding this section, it construed the original act as requiring that duty with relation to track buyers, has no merit. American Surety Co. v. Butler, 86 M 584, 593, 284 P 1011.

Independent Action

This section does not preclude an aggrieved party from bringing its own action independently. On the contrary, such right is expressly provided for by section 6-313, which is made applicable to actions on surety bonds by section 6-331. State ex rel. Farmers Elevator Co. of Reserve v. District Court, 147 M 72, 410 P 2d 160.

Protection of Holders of Grain Storage Tickets

While the status of holders of grain storage tickets with reference to the warehouseman is that of bailors, they are creditors within the meaning of this section, authorizing the state department of agriculture to intervene where the warehouseman becomes insolvent, for the purpose of protecting their interests. Department of Agriculture, Labor and Industry v. DeVore, 91 M 47, 51, 6 P 2d 125.

Collateral References

Agriculture⇨2; Warehousemen⇨16, 18. 3 C.J.S. Agriculture § 6.

Tort liability of warehouseman for theft by servant. 15 ALR 2d 847.

Warehouseman's liability for injury to or destruction of stored goods from floods, heavy rains, or the like. 60 ALR 2d 1097.

3-230. (3590) **Special inspection of grain.** In case grain is sold for delivery on Montana grade to be shipped from places not provided with state inspection under this act, the buyer, seller, or person making the delivery may have it inspected out by notifying an inspector, whose duty it shall be to have such grain inspected, and after it is inspected, to issue to the buyer, seller, or person delivering it, on request, an inspector's certificate showing the grade of such grain. The person or persons calling for such inspection shall pay for the same a reasonable fee, to be fixed by the commissioner of agriculture.

Grain that is shipped to points within the state where no inspection is maintained may be inspected on request of either the buyer or seller, and a certificate may be issued showing the grade of such grain. The charge for such service shall at least equal the entire cost thereof, and shall be paid by the party calling for the same.

History: En. Sec. 34, Ch. 216, L. 1921; re-en. Sec. 3590, R. C. M. 1921.

Collateral References
Inspection⇨3.
44 C.J.S. Inspection § 4.

3-231. (3591) **Sampling grain.** From all grain shipped to terminal warehouses, and from all grain inspected or weighed, samples may be drawn, which samples shall become the property of the state, and subject to disposition by the commissioner of agriculture, under such rules and regulations as the commissioner may prescribe.

It shall be the duty of the commissioner of agriculture to transmit samples of grain, showing the standards thereof adopted, to such chambers of commerce, boards of trade, exporters and persons, firms, corporations, or associations handling and dealing in grain, as the commissioner may designate, and upon request he shall furnish such samples to smaller parties in this state or the United States, under such reasonable rules and regulations as the commissioner may prescribe.

History: En. Sec. 35, Ch. 216, L. 1921; re-en. Sec. 3591, R. C. M. 1921.

Collateral References
Agriculture⇨2.
3 C.J.S. Agriculture § 6.

3-232. (3592) **Examination of grain cars at destination—license of grain weighers.** All inspectors, samplers and weighers, before opening the doors of any car containing grain, upon arrival at any of the places designated by the commissioner of agriculture for inspection, shall first ascertain the condition of such cars, and determine whether any leakages have occurred while said cars were in transit, whether or not the doors were properly secured and sealed at point of shipment, and shall make a record of such facts in all cases, giving seal numbers.

After such examinations have been made, the state officials shall securely close and reseal such doors as have been opened by them, using the special seal of the commissioner of agriculture for the purpose.

A record of all original seals broken by said officials and the date when broken, and also a record number of said seals, shall be made by them. An inspector, weigher, or sampler shall break the seal, weigh and superintend the loading of all cars of grain subject to inspection, and it shall be unlawful for any other person, or persons, to break the seal or weigh such cars of grain.

The commissioner of agriculture shall have power to require all persons, firms, corporations, or warehousemen engaged in weighing grain within the state of Montana to obtain a license, and prescribe rules and regulations governing the application for and the issuance of such licenses, but no fee shall be charged therefor, and any person, firm, corporation, or warehouseman, who shall weigh any grain without first having obtained said license, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars.

All fees, licenses, and other charges collected under the provisions of this act shall be, by the person collecting the same, paid to the state treasurer of the state of Montana, and by said treasurer placed in the general fund.

History: En. Sec. 36, Ch. 216, L. 1921; re-en. Sec. 3592, R. C. M. 1921.

Cross-Reference

Carrying on business without license, penalty, sec. 94-1511.

3-233. Fees—disposition. All fees and other charges authorized by law to be fixed by the commissioner of agriculture for the inspection, grading, weighing and protein-testing of grain shall be by said commissioner kept as near the actual cost of such services as is possible. All such fees and charges shall be paid to the commissioner and by him deposited with the state treasurer. The state treasurer shall place five per cent (5%) of all such fees and charges in the general fund and ninety-five per cent (95%) of all such fees and charges in the earmarked revenue fund. Fees deposited in the earmarked revenue fund may be used to pay all claims for expense incurred in inspecting, grading, weighing and protein-testing of grain, when such claims have been approved as provided by law. No funds of the state shall be used by the commissioner in carrying out such services, except moneys presently appropriated.

History: En. Sec. 1, Ch. 203, L. 1957; amd. Sec. 27, Ch. 147, L. 1963.

CHAPTER 3

SEED WAREHOUSEMEN—LICENSING

Section 3-301. Citation of act—definitions.
3-302. License fee of seed warehousemen—bond—exception.
3-303. Penalty for conducting business without license.
3-304. Definition of "agricultural seeds."
3-305. Warehouseman to receive seed for storage without discrimination.
3-306. Rules and regulations may be made by commissioner of agriculture—inspections—reports—form of warehouse receipts.
3-307. Storage constitutes bailment.
3-308. Additional bond required from grain warehousemen for seed storage.
3-309. Co-operative agencies' authority to store seeds—effect of partial invalidity of act.

3-301. (3592.1) **Citation of act—definitions.** This act and the act amended hereby may be referred to and cited as the "Act Regulating Public Warehouses For, and Buyers of Agricultural Seeds." In this act, the terms and expressions hereinafter listed shall be given the meaning assigned to them, as follows:

(a) "Agent," "broker" and "commission man" shall be held to mean and include any person, firm, copartnership or association who engages in the business of negotiating sales or contracts for agricultural seeds or of making sales or purchases of agricultural seeds for a commission;

(b) "Agricultural seeds" shall mean and include the seeds of red clover, white clover, alsike, alfalfa, Kentucky bluegrass, timothy, brome grass, orchard-grass, redtop, meadow fescue, oatgrass, ryegrass and other grasses and forage plants, corn, rape, buckwheat, beans, peas and registered or certified seed grains in bags;

(c) "Commissioner" shall mean the commissioner of agriculture of the state of Montana;

(d) "Public warehouse," "public warehouse for agricultural seeds" or "public agricultural seed warehouse" shall mean and include any warehouse or structure in which "agricultural seed" is received from the public for storage, assembling or cleaning;

(e) "Seed buyer" shall be held to mean and include any person, firm, copartnership, corporation or association engaged in the business of buying uncleaned agricultural seed for shipment, cleaning, processing or for resale and who does not own, control or operate a public agricultural seed warehouse;

(f) "Warehouseman" shall be held to mean and include any person, firm, copartnership, corporation or association owning, controlling or operating a public agricultural seed warehouse.

History: En. Sec. 1, Ch. 50, L. 1927; amd. Sec. 1, Ch. 158, L. 1951.

Surety Company Not Relieved from Liability because Bean Warehouse Not Licensed or Regulated by State

Where a bond for the protection of those storing property in a bean warehouse was not conditioned on the licensing and supervision of the warehouse by the state and the surety company knew there was no state law for the licensing, regulation, or supervision of bean warehouses, it is not relieved from liability because the warehouse was not licensed nor subject to supervision by the state. Fidelity & Deposit Co. of Maryland v. State of Montana, 92 F 2d 693, 697, affirming 16 F Supp 489, 492.

Collateral References

Warehousemen⇐6.

93 C.J.S. Warehousemen and Safe Depositaries § 5.

3-302. (3592.2) **License fee of seed warehousemen—bond—exception.** Every person, firm, copartnership, corporation or association engaging in the business of agricultural seed warehouseman or holding out to the public as receiving agricultural seeds for storage, or operating any warehouse wherein is received agricultural seeds for storage, at request of members of the public, and every seed buyer, agent, broker or commission man, or buyers on commission, engaging in the merchandising of uncleaned agricultural seed in the state of Montana, shall, on or before the first day of July of each year pay to the treasurer of the state of Montana a license fee in the sum of fifteen dollars ($15.00) for each and every warehouse or other place of business where agricultural seed is received for purchase, storage or shipment and shall also, on or before such date, file with the commissioner of agriculture a good and sufficient bond to the state of Montana in such sum and in such form as the commissioner may require conditioned upon the faithful performance of the acts and duties enjoined upon any such person, firm, copartnership, corporation or association by

law. The commissioner may from time to time require additional bond when in his judgment the volume of business of the licensee so requires, under penalty of revoking the license. All licenses shall expire on June thirtieth of the year following the year of issuance. Nothing in this section shall apply to a bona fide grower hauling or assembling agricultural seed of his own production, for sale, storage, cleaning, processing or shipment.

History: En. Sec. 2, Ch. 50, L. 1927; amd. Sec. 2, Ch. 158, L. 1951.

Collateral References
Warehousemen⇐18.

3-303. (3592.3) **Penalty for conducting business without license.** Any person, firm, copartnership, corporation or association who shall engage in or carry on any business or occupation for which a license is required by this act without first having procured a license therefor, or who shall continue to engage in or carry on any such business or occupation after such license has been revoked, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00), and each and every day that such business or occupation is so carried on or engaged in shall be a separate offense.

History: En. Sec. 3, Ch. 50, L. 1927.

Collateral References
Warehousemen⇐36.

3-304. (3592.4) **Definition of "agricultural seeds."** The term "agricultural seeds" as used in this act shall be held to mean and include the seeds of red clover, white clover, alsike, alfalfa, Kentucky bluegrass, timothy, brome grass, orchard-grass, redtop, meadow fescue, oatgrass, ryegrass, and other grasses and forage plants, corn, rape, buckwheat, beans, peas, and registered or certified seed grains in bags.

History: En. Sec. 4, Ch. 50, L. 1927.

Collateral References
Federal and state agricultural adjustment acts. 92 ALR 1482; 98 ALR 1195; 102 ALR 937 and 114 ALR 136.

3-305. (3592.5) **Warehouseman to receive seed for storage without discrimination.** Every warehouseman subject to the provisions of this act shall receive for storage without discrimination of any kind so far as the capacity of his warehouse will permit all agricultural seeds tendered to him in the usual course of business in suitable conditions for storage providing, however, that he shall not be obliged to receive any agricultural seeds other than those which he holds himself out as dealing in and which he is equipped to handle.

History: En. Sec. 5, Ch. 50, L. 1927.

Collateral References
Warehousemen⇐9.

3-306. (3592.6) **Rules and regulations may be made by commissioner of agriculture—inspections—reports—form of warehouse receipts.** The commissioner of agriculture shall prescribe such rules and regulations, within the limitations of this act, as may be necessary and proper to facilitate the administration thereof, and to ensure its application to all persons, firms, copartnerships and corporations subject to its provisions, and for the proper and safe conduct of the business regulated by this act, in the

public interest. The commissioner is hereby invested with authority to make such inspections of seed warehouses or other places for storage of seed, or for handling the same by licensees hereunder, and of the facilities employed or used in carrying on the businesses referred to herein, and of agricultural seeds, uncleaned or cleaned, and the containers thereof, and such other inspections, and to take samples of such seeds, as he deems necessary in carrying out this act, and applying and enforcing the same. The commissioner may require periodic or special reports from said warehousemen, buyers, brokers, commission buyers or agents on forms that may be prescribed by him, in aid of the administration of this act. The commissioner shall prescribe the form and contents of warehouse receipts which shall be issued and delivered by warehousemen or seed buyers to the owner of agricultural seeds, or to the owner's representative, upon transfer or receipt of such seed, and no other forms of warehouse receipt shall be issued and delivered by licensees under this act.

History: En. Sec. 6, Ch. 50, L. 1927; amd. Sec. 3, Ch. 158, L. 1951.

Collateral References

Warehousemen⇨12.

83 C.J.S. Warehousemen and Safe Depositaries § 20.

56 Am. Jur. 336, Warehouses, § 32.

Right of purchaser of warehouse receipt against warehouseman. 38 ALR 1205.

"Warehouse purchase receipt" as bailment or contract of sale. 91 ALR 907.

Provision in warehouseman's receipt limiting liability as applicable where warehouseman converts property. 99 ALR 266.

Storage contract as a bailment of chattels or lease of place where chattels are stored. 138 ALR 1137.

Validity and applicability of stipulation in warehouseman's receipt fixing valuation of property as basis of responsibility. 142 ALR 776.

Necessity of bringing to bailor's attention provision in warehouse receipt limiting liability of warehouseman. 160 ALR 1112.

Warehouseman's liability for injury to or destruction of stored goods from floods, heavy rains, or the like. 60 ALR 2d 1097.

3-307. (3592.7) **Storage constitutes bailment.** The storage of agricultural seed under the terms of this act shall constitute a bailment and not a sale and upon the return of the warehouse receipt to the proper warehouseman properly endorsed, and upon payment of tender of all advances and legal charges the holder of such warehouse receipt shall be entitled to, and it shall be compulsory for the warehouseman to deliver to such owner and holder of the warehouse receipt, the identical agricultural seed so placed in said warehouse for storage.

History: En. Sec. 7, Ch. 50, L. 1927.

Collateral References

Warehousemen⇨10, 25 (4).

Tort liability of warehouseman for theft by servant. 15 ALR 2d 847.

Deposit of grain without obligation to return identical grain as a bailment or a sale. 54 ALR 1166.

Storage contract as a bailment of chattels or lease of place where chattels are stored. 138 ALR 1137.

3-308. (3592.8) **Additional bond required from grain warehousemen for seed storage.** None of the provisions of this act shall be construed as requiring an additional license from a public warehouseman or other person, corporation or association, who is licensed to handle or store grain, but if any person, firm, copartnership, corporation or association holding a license to handle or store grain shall also choose to engage in the business of storing any agricultural seed for the public it shall be necessary to furnish such additional bond as the commissioner of agriculture shall de-

termine, and in the storage of such agricultural seed such person, firm, copartnership, corporation or association shall be subject to the terms and conditions of this act.

History: En. Sec. 8, Ch. 50, L. 1927.

Collateral References
Warehousemen⊂⊃6, 18.

3-309. (3592.9) **Co-operative agencies' authority to store seeds—effect of partial invalidity of act.** Co-operative associations or co-operative corporations when licensed to handle agricultural seeds as herein provided may reserve sufficient storage space to provide for the storage of such agricultural seeds that may reasonably be expected to be tendered for storage by their members before receiving seeds for storage from nonmembers. If for any reason the preceding part of this section shall be declared invalid, then co-operative associations and co-operative corporations when licensed to handle agricultural seeds shall be subject to the same terms and conditions as others licensed to handle seeds as in the other parts of this act provided and the remaining parts of this act shall not be affected.

History: En. Sec. 9, Ch. 50, L. 1927.

43 C.J.S. Industrial Co-operative Societies §§ 1-8.

Collateral References
Agriculture⊂⊃6.

CHAPTER 4

FARM STORAGE OF GRAIN AS BASIS FOR FARM CREDIT—INSPECTION AND CERTIFICATION

Section 3-401. Purpose of act.
3-402. Farm storage commissioner.
3-403. Powers and duties of commissioner.
3-404. Inspectors—how appointed.
3-405. Qualifications of inspectors.
3-406. Term of office of inspector.
3-407. Repealed.
3-408. Fees for inspectors.
3-409. Applications for testing and sealing of grain.
3-410. Penalty for false application.
3-411. Duties of inspector.
3-412. Penalty for violation of duty by inspector.
3-413. Duty of owner respecting the care and delivery of grain stored.
3-414. Form of warehouse certificate.
3-415. Warehouse certificates—how issued.
3-416. Recording certificate.
3-417. Waiver of locking and sealing.
3-418. Owner of grain responsible for amount of grain stated on certificate.
3-419. Penalty for breaking seals.
3-420. Expenses for administration of act—how paid—fees for inspection.

3-401. (3592.10) **Purpose of act.** The purpose and object of this act is to provide the owners of grain the means of warehouse or storing the same on farms on or near railroad right of ways and other suitable places under proper safeguards, as a basis of farm credit on the grain so stored.

History: En. Sec. 1, Ch. 27, L. 1929.

Collateral References
Warehousemen⊂⊃19.

3-402. (3592.11) **Farm storage commissioner.** There is hereby created the office of farm storage commissioner, and the commissioner of agricul-

ture for the state of Montana shall be ex officio such commissioner. Such commissioner shall manage, control and direct the operation of the provisions of this act, with full and complete power to make effective the provisions of this act and the rules and regulations which he may prescribe to carry out the purposes and objects thereof.

History: En. Sec. 2, Ch. 27, L. 1929.

Compiler's Note

The compiler has, pursuant to section 3-101.1, substituted "commissioner of agriculture" for "commissioner of agriculture, labor and industry" in this section.

Collateral References

Agriculture⊂⇒2.
3 C.J.S. Agriculture § 6.

3-403. (3592.13) **Powers and duties of commissioner.** The commissioner shall be vested with full and complete power to carry out the provisions of this act, and in addition to such general powers hereby conferred, he shall have the following express powers:

First, to appoint inspectors of grain whenever petitioned so to do as provided herein, prescribe the duties of such inspectors and remove them summarily whenever said commissioner may deem it advisable;

Second, to make and promulgate such rules and regulations, not inconsistent herewith, as shall be necessary or desirable to carry out effectually the purposes hereof;

Third, he shall have full power to set up the necessary machinery to make effective the provisions of this act, such as the purchase of supplies, printing, stationery and equipment, and the appointing of clerical help and assistance, all of which expense shall be audited and paid as a part of the general expense of the administration of this act.

History: En. Sec. 4, Ch. 27, L. 1929.

Collateral References

Inspection⊂⇒4.
44 C.J.S. Inspection §§ 10, 11.

3-404. (3592.14) **Inspectors—how appointed.** Whenever ten or more farmers having grain to inspect tributary to any market center shall petition the commissioner for the appointment of an inspector, the commissioner shall forthwith appoint such inspector, provide for the method of inspection, and require such inspector to certify all warehouse certificates for grain inspected, and certify to the commissioner all information that may be required of him by the provisions of this act, or by the rules and regulations laid down by the commissioner.

History: En. Sec. 5, Ch. 27, L. 1929; amd. Sec. 1, Ch. 96, L. 1931.

3-405. (3592.15) **Qualifications of inspectors.** No inspector shall be appointed under the provisions of this act until a written application shall first be submitted to and approved by the commissioner showing the applicant's experience and fitness to become an inspector of grain under the provisions of this act.

History: En. Sec. 6, Ch. 27, L. 1929.

3-406. (3592.16) **Term of office of inspector.** When appointed such inspector shall hold his office at the will of the commissioner.

History: En. Sec. 7, Ch. 27, L. 1929

3-407. (3592.17) **Repealed—Chapter 177, Laws of 1965.**

Repeal

This section (Sec. 8, Ch. 27, L. 1929), relating to the bonds of inspectors, was repealed by Sec. 51, Ch. 177, Laws 1965.

For new provisions relating to bonds for state officers and employees, see sec. 6-105 et seq.

3-408. (3592.18) **Fees for inspectors.** The commissioner shall from time to time fix the fees or compensation of inspectors for their services. Such fees or compensation shall be based upon a certain sum per bushel of the grain so inspected.

History: En. Sec. 9, Ch. 27, L. 1929; amd. Sec. 28, Ch. 147, L. 1963.

Collateral References

Inspection⇨6.
44 C.J.S. Inspection § 12.

3-409. (3592.19) **Applications for testing and sealing of grain.** Whenever any inspector shall be appointed under the provisions of the act, any owner of grain within his district desiring to store the same, shall make written application to the commissioner to be filed with the inspector, indicating where said grain is stored, the kind of structure in which stored, the encumbrance on said grain, if any; which application shall be signed and sworn to by the applicant. Whenever any grain is owned by more than one owner, said application shall be signed by all having an interest therein. In case such grain is mortgaged, the application for inspection shall be signed by the owner, and any certificate issued for grain owned by more than one person, or mortgaged, shall be issued in the name of such persons including the mortgagee.

History: En. Sec. 10, Ch. 27, L. 1929.

Collateral References

Warehousemen⇨7.

3-410. (3592.20) **Penalty for false application.** Any person who shall state in such application any material fact known to be false and for the purpose of misleading the commissioner or the inspector, shall be guilty of a misdemeanor.

History: En. Sec. 11, Ch. 27, L. 1929.

Collateral References

Warehousemen⇨36.

3-411. (3592.21) **Duties of inspector.** Whenever application shall be made to the commissioner for the inspection and sealing of grain whether upon the farm or on or near any railroad right of way, or other suitable place, the inspector shall as soon as it is possible to do so, inspect said grain, and if said grain and the structure in which it is stored comply with the provisions of this act, and the regulations of the commissioner, the inspector shall measure and obtain the cubic feet content of the grain in the bin, probe the grain in at least five different places so as to obtain a required amount of grain to mix and divide into two samples, he shall then number the bin and the samples to correspond, seal the bin with a seal provided by the commissioner and place on the structure a printed copy of the penalty clause provided by this act for the unlawful breaking of such seal. The inspector shall then forward to the laboratory as directed by the commissioner, one of the samples obtained from the bin. The laboratory shall issue inspection certificates in triplicate, which shall be dated,

numbered and designate the owner's name, the number of sample inspected, the kind of grain, and, if mixed, the percentage of each kind, the dockage, and the moisture and protein content. As soon as inspection certificates are obtained by the commissioner he shall issue negotiable warehouse certificates in triplicate, attaching to each a copy of inspection certificate and sign the warehouse certificates over the facsimile signature of the local inspector and when so signed they shall be deemed to be issued by the proper authority of the commissioner. Inspectors shall have the right at any time to enter upon the premises where any grain is stored under the provisions of this act for the purpose of making an inspection thereof, and the acceptance of the warehouse certificate by the owner, shall be deemed consent to such entry and inspection. Inspectors appointed under the provisions of this act shall have the same powers as a notary public to take acknowledgments and administer oaths that may be required either by provisions of this act or by rules and regulations laid down by the commissioner.

History: En. Sec. 12, Ch. 27, L. 1929; amd. Sec. 2, Ch. 96, L. 1931.

Collateral References
Warehousemen⊂⊃7.

3-412. (3592.22) **Penalty for violation of duty by inspector.** Any inspector who shall willfully certify falsely to any material fact in or concerning any warehouse certificate, or who shall willfully certify falsely to the commissioner any material fact required to be certified under the provisions of this act, or by the rules and regulations of the commissioner, shall be guilty of a felony, and upon conviction thereof shall be punished by imprisonment for a term of not less than two and one-half or not more than five years.

History: En. Sec. 13, Ch. 27, L. 1929.

Collateral References
Inspection⊂⊃7.
44 C.J.S. Inspection § 13.

3-413. (3592.23) **Duty of owner respecting the care and delivery of grain stored.** The owner of grain stored under the provisions of this act shall be charged with the due care of the same and shall exercise that degree of care and diligence which an ordinary and prudent man would exercise with regard to similar property of his own. The owner shall also, upon demand of the holder of such certificate, deliver said grain to the market place indicated in the application without charge to the holder. No legal demand for the delivery of said grain can be made, however, upon said owner until the maturity of the obligation for which said certificate may be pledged, or until the security shall become in any way impaired; providing, however, that the owner of said grain, in his discretion may sell said grain prior to the maturity of his obligation under this certificate.

History: En. Sec. 14, Ch. 27, L. 1929.

Collateral References
Warehousemen⊂⊃24 (1).

3-414. (3592.24) **Form of warehouse certificate.** The form of said warehouse certificate issued under the provisions of this act shall be prepared and approved by the commissioner, and every such certificate must embody within its written or printed terms the following:

(1) The consecutive number of the certificate.

(2) The date of issuance of said certificate.

(3) A description of the structure in which the grain is stored, and the legal description of the premises where stored.

(4) A description of the grain, giving its grade, kind, variety, dockage, protein content, and moisture content, the amount thereof to be computed from the cubical measurement thereof.

(5) The name of the owner or owners, whether ownership is sole, joint or in trust, and the conditions of such ownership, as shown by the application.

(6) A statement of any and all encumbrances upon said grain as reported in the application.

(7) A statement that the grain will be delivered at elevator or on railroad; but it may be sold on track, to arrive or be consigned at the option of the owner of said grain.

(8) The fascimile signature of the commissioner and the countersignature of the inspector.

(9) Notation of inspection fee.

History: En. Sec. 15, Ch. 27, L. 1929.

Collateral References

Warehousemen⊂⇒12.
56 Am. Jur. 336, Warehouses, § 32.

3-415. (3592.25) **Warehouse certificates—how issued.** All such certificates issued under the provisions of this act shall be in triplicate, the original to be delivered to the owner, one copy to be filed in the office of the commissioner; and the other copy to be filed in the office of the clerk and recorder of the county in which said grain is stored. Both copies of the certificate shall have plainly printed and stamped across the face thereof, "Duplicate—No Value."

History: En. Sec. 16, Ch. 27, L. 1929; amd. Sec. 3, Ch. 96, L. 1931.

3-416. (3592.26) **Recording certificate.** The commissioner shall file in the office of clerk and recorder of the county wherein said grain is stored, a copy of the warehouse certificate, which shall be indexed under chattel mortgages. Such filing shall be notice that the grain described therein is pledged to the redemption of an outstanding negotiable warehouse receipt.

History: En. Sec. 17, Ch. 27, L. 1929; amd. Sec. 4, Ch. 96, L. 1931.

3-417. (3592.27) **Waiver of locking and sealing.** The locking up and sealing of any storage facility acceptable to the commissioner is hereby waived, if and when the applicant shall have filed a warehouseman's bond, as a guaranty to the carrying out of the provisions of this act. Such bond shall be passed on and approved by the commissioner.

History: En. Sec. 18, Ch. 27, L. 1929.

Collateral References

Warehousemen⊂⇒18.

3-418. (3592.28) **Owner of grain responsible for amount of grain stated on certificate.** Whenever the amount of grain certified to on the certificate shall have been computed by cubic measurement, the amount shall be deemed to be prima facie the amount of said grain, but the actual

amount shall be determined by the actual weight thereof. The owner, however, shall be responsible and liable to the holder of the certificate, for the delivery of the amount of grain indicated on said certificate by actual weight, or the value of any shortage thereon.

History: En. Sec. 19, Ch. 27, L. 1929.

Collateral References
Warehousemen⇐25 (1).

3-419. (3592.29) **Penalty for breaking seals.** Any person who shall with intent to defraud, break the seal of any structure in which grain is stored under the provision of this act, shall be guilty of a felony, and upon conviction thereof shall be punished by imprisonment for a period of not less than one or more than two years.

History: En. Sec. 20, Ch. 27, L. 1929.

Collateral References
Warehousemen⇐37.

3-420. (3592.30) **Expenses for administration of act—how paid—fees for inspection.** The expense of the administration of this act shall be paid by the owners of the grain, and the fee collected at the time of inspection and sealing. The amount so paid shall be stated in the certificate. The fee for such inspection shall not exceed one-half cent per bushel, except that when the amount of grain offered for inspection by a single applicant is found to be less than one thousand bushels the minimum fee shall be for one thousand bushels. Such fees shall be paid to the commissioner and deposited with the state treasurer in the earmarked revenue fund.

History: En. Sec. 21, Ch. 27, L. 1929; amd. Sec. 5, Ch. 96, L. 1931; amd. Sec. 29, Ch. 147, L. 1963.

Collateral References
Inspection⇐6.
44 C.J.S. Inspection § 12.

CHAPTER 5

PROTEIN TESTING OF GRAIN

Section 3-501. Definition of "laboratory" and "analyst."
3-502. Administration of act.
3-503. Protein testing laboratory—chief grain inspector to control.
3-504. County protein testing laboratories—county commissioners may establish.
3-505. Equipment for county laboratories—operating costs.
3-506. Selection of analyst.
3-507. Qualification of analyst.
3-508. Analyst's duties.
3-509. Form and contents of protein certificate.
3-510. Fees for protein tests—disposal of proceeds.
3-511. Powers of commissioner of agriculture.
3-512. Protein test to be made of all wheat delivered grain warehousemen—manner of making test—result—fee.
3-513. Penalty for violation.

3-501. (3592.31) **Definition of "laboratory" and "analyst."** Whenever the word "laboratory" is mentioned in this act, it shall be held to mean protein testing laboratory. Whenever the word "analyst" is mentioned in this act, it shall be held to mean protein analyst.

History: En. Sec. 1, Ch. 111, L. 1931.

Collateral References
Inspection⇐2.
44 C.J.S. Inspection § 12.

3-502. (3592.32) **Administration of act.** The commissioner of agriculture, through the division of grain standards and marketing, shall be charged with the administration of this act.

History: En. Sec. 2, Ch. 111, L. 1931.

Collateral References

Agriculture⇦2.
3 C.J.S. Agriculture § 6.

Compiler's Note

The compiler has, pursuant to section 3-101.1, substituted "commissioner of agriculture" for "commissioner of agriculture, labor and industry" in this section.

3-503. (3592.33) **Protein testing laboratory—chief grain inspector to control.** The commissioner of agriculture shall establish, and maintain, one protein testing laboratory under the direction of the chief grain inspector, and he shall determine the standard of analysis, controlling all other laboratories operating under the provisions of this act.

History: En. Sec. 3, Ch. 111, L. 1931.

Collateral References

Inspection⇦3.
44 C.J.S. Inspection § 4.

3-504. (3592.34) **County protein testing laboratories—county commissioners may establish.** The board of county commissioners are hereby delegated general powers to establish in their discretion within their respective counties protein testing laboratories, when the order establishing the same has been approved by the commissioner of agriculture.

History: En. Sec. 4, Ch. 111, L. 1931.

3-505. (3592.35) **Equipment for county laboratories—operating costs.** Whenever a laboratory is established under section 3-504, the cost of such equipment as may be required, and its installation, also the space it occupies, is to be provided by the county establishing said laboratory, providing that the commissioner of agriculture may when requested by the county commissioners of any county, where a protein laboratory has been previously established, be authorized to make arrangements with the said county commissioners of said county to retain its protein laboratory equipment, provided that the said county agrees to care for the same without any expense to the department of agriculture of the state of Montana. The state, by order of the commissioner of agriculture, may finance the operation of any such laboratory, as may be established under section 3-504. Operating costs are held to mean and include, the compensation of the analyst in charge of the laboratory, all stationery and printed forms, supplies including chemicals and all other items that may be necessary to the proper operation, except rent and replacement of permanent equipment owned by the county.

History: En. Sec. 5, Ch. 111, L. 1931.

3-506. (3592.36) **Selection of analyst.** The analyst in charge of any laboratory operated under the provisions of this act, shall be selected by the county commissioners, and appointed with the approval of the commissioner of agriculture.

History: En. Sec. 6, Ch. 111, L. 1931.

Collateral References

Inspection⇦4.
44 C.J.S. Inspection §§ 10, 11.

3-507. (3592.37) **Qualification of analyst.** No such analyst shall be appointed under the provisions of this act, until a written application shall first be submitted and approved by the commissioner of agriculture, showing the applicant's experience in chemistry and fitness to become a protein analyst under the provisions of this act.

History: En. Sec. 7, Ch. 111, L. 1931.

3-508. (3592.38) **Analyst's duties.** Each such analyst in charge of a laboratory, shall test all samples submitted to him for analysis and issue certificates to the person submitting same showing the percentage of protein content.

History: En. Sec. 8, Ch. 111, L. 1931.

3-509. (3592.39) **Form and contents of protein certificate.** The form of protein certificate issued under the provisions of this act, shall be prepared and approved by the commissioner of agriculture, and every such certificate shall embody within its written or printed terms the following:

(a) The consecutive number of the certificates.

(b) That it is issued by the county making same, under authority of the department of agriculture.

(c) The place of issue and the date.

(d) The kind of grain.

(e) The place from which the sample was taken.

(f) The amount of sample and if a carload, the car number and initials.

(g) A statement of the amount of protein in percentage.

(h) A statement printed or stamped on the face of the certificate, showing the sample to have been submitted in a suitable air-tight container, or otherwise as the case may be.

(i) The name and title of the analyst.

History: En. Sec. 9, Ch. 111, L. 1931.

Collateral References

Inspection⇐5.
44 C.J.S. Inspection §§ 5-8.

Compiler's Note

The compiler has, pursuant to section 3-101.1, substituted "department of agriculture" for "department of agriculture, labor and industry" in this section.

3-510. (3592.40) **Fees for protein tests—disposal of proceeds.** The commissioner of agriculture shall fix the fees for testing grain for protein content, and such fees shall be collected by the analyst when tests are made, and remitted to the commissioner of agriculture once each month, and deposited with the state treasurer in the earmarked revenue fund.

History: En. Sec. 10, Ch. 111, L. 1931; amd. Sec. 30, Ch. 147, L. 1963.

Collateral References

Inspection⇐6.
44 C.J.S. Inspection § 12.

Cross-Reference

Fees, disposition, use, sec. 3-233.

3-511. (3592.41) **Powers of commissioner of agriculture.** The commissioner of agriculture shall be vested with full and complete power to carry out the provisions of this act, and in addition to such general powers hereby conferred he shall have the following express powers:

(a) To open each laboratory for operation only such years as, in his discretion, marketing conditions require a knowledge of the protein content, to enable the owners of grain to obtain the full market value thereof.

(b) To make and promulgate such rules and regulations not inconsistent herewith, as may be necessary or desirable to carry out effectively the purpose of this act.

(c) He shall have full power to set up the necessary machinery to make effective the provisions of this act such as the purchase of supplies, printing stationery and equipment and the appointment of clerical help and assistance all of which expense shall be audited and paid as part of the general expense of the administration of this act.

History: En. Sec. 11, Ch. 111, L. 1931.

Collateral References
Agriculture⇐2.
3 C.J.S. Agriculture § 6.

3-512. (3592.42) **Protein test to be made of all wheat delivered grain warehousemen—manner of making test—result—fee.** Each public grain warehouseman as defined by the laws of the state shall take a sample from each load of wheat delivered to his warehouse and preserve such sample in an air-tight container with the owner's name thereon. As hauling is completed by each owner the several samples taken from all the loads of any one owner shall be mixed thoroughly together, except that high, medium, or low protein wheat from the same owner or wheat of different types, varieties or grades shall be segregated and separate containers provided for each. A one-pint portion of the composite sample shall be submitted to the state grain laboratory at Great Falls, Harlowton, or Bozeman and the balance shall be held in the owner's container. In the event of dissatisfaction on the part of warehousemen or owner either party shall have the right to a final appeal to the state laboratory.

In case of an appeal a one-pint portion of the remainder of the owner's sample shall again be submitted to the state laboratory with a statement of facts of the appeal and a final test in duplicate shall be made by the laboratory. The certificate of the state laboratory of such test shall be final and binding upon both parties in establishing the basis of the price paid by the warehouseman. A fee of fifty cents ($0.50), for each protein test may be made, to be deducted and paid at the time of final settlement; provided, however, upon written request of owner, no protein test need be made upon said owner's wheat.

History: En. Sec. 1, Ch. 160, L. 1935.

Collateral References
Inspection⇐5.
44 C.J.S. Inspection §§ 5-8.

3-513. (3592.43) **Penalty for violation.** Any person, firm or corporation violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than three hundred dollars ($300.00) and not more than five hundred dollars ($500.00) for each offense.

History: En. Sec. 2, Ch. 160, L. 1935.

Collateral References
Inspection⇐7.
44 C.J.S. Inspection § 13.

CHAPTER 6

FARM STORAGE PUBLIC WAREHOUSEMEN

Section 3-601. Farm storage supervisor.
3-602. Farm storage public warehouseman defined—license—fee—disposal.
3-603. Bond of applicant for license—report of licensees.
3-604. License to be posted.
3-605. Duties of farm storage public warehouseman—form of receipts.
3-606. Application for special bin farm warehouse receipt.
3-607. Inspection of books and records.
3-608. Duty of custodian.
3-609. Warehouse receipts—cancellation.
3-610. Penalty for breaking seal or removing or damaging stored grain.

3-601. (3592.44) **Farm storage supervisor.** The commissioner of agriculture of the state of Montana, hereinafter called the "commissioner," is hereby empowered, and it is his duty to carry out the provisions of this act. In so doing he shall appoint a supervisor of public farm storage warehouses, hereafter called the "supervisor." The commissioner is hereby given full and complete authority to make the necessary rules and regulations for carrying out the provisions of this act. The chief of the grain division in the department of the commissioner of agriculture shall be the supervisor of this act.

History: En. Sec. 1, Ch. 174, L. 1931.

Compiler's Note

The compiler has, pursuant to section 3-101.1, substituted "commissioner of agriculture" for "commissioner of agriculture, labor and industry" in this section.

Collateral References

Agriculture⇨2.
3 C.J.S. Agriculture § 6.

3-602. (3592.45) **Farm storage public warehouseman defined—license—fee—disposal.** All persons, firms, corporations or associations, now or hereafter engaged in the business of buying, selling or storing grain in the state of Montana, and licensed by the commissioner to conduct such business, may, upon application in such form as shall be described by the commissioner, receive a license as farm storage public warehousemen in compliance with the provisions of this act, and the rules and regulations of the commissioner. All licenses issued under the provisions of this section shall run for one (1) year, and expire on May thirty-first of each year. The license fee, which must accompany the application is hereby fixed at five dollars ($5.00) for each warehouse operated, except that where more than one (1) warehouse operated by the same person, firm, corporation or association is located in one (1) place only one (1) license need be applied for. The fees collected under the provisions of this act shall be paid into the state treasury and credited to the general fund.

History: En. Sec. 2, Ch. 174, L. 1931; amd. Sec. 31, Ch. 147, L. 1963.

Collateral References

Warehousemen⇨6.
93 C.J.S. Warehousemen and Safe Depositaries § 5.

3-603. (3592.46) **Bond of applicant for license—report of licensees.** Before any license shall be issued to an applicant under this act there shall be filed with the commissioner a bond with corporate surety in such amount as shall be fixed by the commission, but in no case shall the

amount be less than five thousand dollars ($5,000.00). Such bond shall cover the period of the license and shall run to the state of Montana for the benefit of all persons holding special bin farm warehouse receipts issued under the provisions of this act. This bond shall be conditioned upon the faithful performance of the applicant in complying with the provisions of this act, and all rules and regulations of the commissioner issued hereunder. The commissioner is authorized to require the filing of additional bond with corporate surety in an amount necessary to protect the holders of special bin farm warehouse receipts issued in pursuance to the provisions of this act.

Every licensee hereunder shall render to the commissioner a report at the close of each month, in such form as the commissioner shall prescribe, setting forth the number of each special bin farm warehouse receipt issued, the name of the person to whom issued, the date, the gross, dockage and net bushels, kind and grade of grain, character of the bin or granary and the number of the seal applied, or other pertinent information which the commissioner may require. From such monthly reports the commissioner shall determine the amount of bond necessary for the protection of special bin farm warehouse receipt holders, and in no case shall the bond be less than the market value of such grain on the last day of the month for which the report is made.

History: En. Sec. 3, Ch. 174, L. 1931.

93 C.J.S. Warehousemen and Safe Depositaries §§ 7, 15.

Collateral References

Warehousemen⊂⇒7, 18.

3-604. (3592.47) **License to be posted.** All licenses issued pursuant to this act shall be posted in a conspicious place in the warehouse of the applicant, and no person, firm, corporation or association shall operate as a farm storage public warehouseman until such license is procured and posted as provided herein. Any person, firm, corporation or association violating the provisions of this act shall be guilty of a misdemeanor.

History: En. Sec. 4, Ch. 174, L. 1931.

Cross-Reference

Carrying on business without license, penalty, sec. 94-1511.

3-605. (3592.48) **Duties of farm storage public warehouseman—form of receipts.** Any farm storage public warehouseman licensed under this act shall be authorized, at his discretion, to issue special bin farm warehouse receipts, which receipts shall be in the name of the elevator company operated by said warehouseman and in the form herein described:

SPECIAL BIN FARM WAREHOUSE RECEIPT

..... ELEVATOR COMPANY ....., 19.....,

....., Montana.

The following described grain has been received for storage under the provisions of Chapter ..... S. L. 1931, from

.....

Name of Owner (Custodian)

.....

Gross Dockage Net Bushels

.....

of Kind of grain grade and dockage

located at .....

Legal description of premises where grain is stored and stored in.....

.....

description of granary

and such granary has been sealed with the seal of the undersigned, number .....

The undersigned elevator company hereby agrees upon surrender of this receipt to make delivery of the grain herein described in net bushels, or if unable to make delivery of the identical grain, to deliver a like quantity of the same grade as represented by this receipt, in net bushels. Upon the surrender of this receipt for delivery in carload lots the holder hereof agrees to pay to the issuing licensee the legal handling charges. The above described grain has been stored to May thirty-first, following the date of issuance hereof, except in the case of shelled corn, when the date of expiration shall be on March thirty-first following. Said grain has been insured for the account of the owner and the premium thereon shall be considered as an advance and collected from the holder hereof at the time of cancellation. The custodian of the grain covered by this receipt agrees to deliver the grain to the elevator of the licensee upon demand. Refusal or failure to so deliver empowers the licensee to take possession and transport the grain to his elevator. The charges of such transporting shall be considered as an advance and collected at the time of cancellation of this receipt.

.....Gross Bu.....Elevator Company,

.....Dockage Bu.....Manager.

.....Net Bu.

No other form of special bin farm warehouse receipt may be issued, nor can any other language be used than that stated in the contract of storage in the above warehouse receipt.

All such warehouse receipts issued under the provisions of this act shall be in triplicate, the original receipts to be printed on white and the two duplicates upon tinted paper, such originals to be delivered to the owner, one of the duplicate copies to be retained by the licensee and the other to be filed in the office of the county clerk and recorder of the county in which said grain is stored, which receipts shall be indexed as a chattel mortgage and for the filing thereof no fee shall be collected by any county clerk and recorder. Such filing shall be noticed that the grain described in such receipt is pledged to the redemption of the same. Any assignment of said receipt may also be filed and properly endorsed upon the receipt and shall when filed have the same force as the filing of an assignment of chattel mortgage. Both copies of receipts shall have plainly printed or stamped across the face thereof "Duplicate Receipt—No Value."

History: En. Sec. 5, Ch. 174, L. 1931.

56 Am. Jur. 335, Warehouses, § 30.

Collateral References

Warehousemen⊂⊃12.

93 C.J.S. Warehousemen and Safe Depositaries § 16.

Relationship of bailor and bailee as between owner of goods and bonded warehouse and proprietor of warehouse. 77 ALR 1502.

Legal effect of transaction by which grain or other commodity is received for storage by one who has not complied with statutory conditions necessary to become a public warehouseman. 108 ALR 928.

Statutory warehousing as determined by character of property stored. 132 ALR 532.

Validity as against third persons of sale or pledge of goods, or receipts issued for goods, retained in warehouse on premises of seller or pledgor (field warehousing). 133 ALR 209.

Tort liability of warehousemen for theft by servant. 15 ALR 2d 847.

Warehouseman's liability for injury to or destruction of stored goods from floods, heavy rains, or the like. 60 ALR 2d 1097.

3-606. (3592.49) **Application for special bin farm warehouse receipt.** The owner of any grain desiring a special bin farm warehouse receipt shall make application therefor to the licensee, in such form as the commissioner shall prescribe, and which shall contain the following specific contract: "The undersigned applicant hereby agrees if a special bin farm warehouse receipt is issued under this application, to give to the grain covered by such receipt the same degree of care and diligence which an ordinary prudent man would exercise to similar property of his own, and to make delivery of the grain covered by said receipt upon demand of the licensee to the elevator of the licensee issuing the receipt, without cost to said licensee."

Prior to the issuance of any special bin farm warehouse receipt it shall be the duty of the licensee carefully to inspect the bin or granary in which the grain is stored to determine the availability for the warehousing of grain; to procure a fair average sample of such grain by the use of a standard grain probe, and thereafter to seal the bin or granary with a ball type seal, bearing the name of the elevator company and the seal number, which numbers are to run consecutively. The sample drawn from the bin or granary is to be placed in an air-tight container and taken to the elevator for inspection; a portion of said sample not less than one (1) pint, shall be kept in an air-tight container, properly marked with the name of the owner and his location, to be held for a period of time not less than one (1) month from the time of inspection.

Any licensee hereunder may make periodic inspections of the bins or granaries upon which such licensee has issued special bin farm warehouse receipts, and for that purpose may enter upon the premises where said bin or granary is located and may break the seal thereon, recording the number of the seal broken and the number of the new seal applied, together with the date, and shall send a report in form prescribed therefor to the commissioner, retaining a copy for his own file.

History: En. Sec. 6, Ch. 174, L. 1931.

93 C.J.S. Warehousemen and Safe Depositaries §§ 18, 19, 29, 34, 35.

Collateral References

Warehousemen⊂⇒13, 19.

3-607. (3592.50) **Inspection of books and records.** It shall be the duty of the supervisor to inspect, or cause to be inspected, all books, records and accounts of licensed farm storage public warehousemen at frequent intervals, to determine that the provisions of this law and the rules and regulations of the commissioner are being complied with. In so doing, the said supervisor or his agents shall have full and complete authority to demand and procure the production of all books, records, documents, memoranda or accounts, pertaining to such licensee in connection with farm storage.

The commissioner or his agents, shall have the right to inspect a bin or granary upon which a special bin farm warehouse receipt has been issued and for such purpose may break the seal upon any such bin or granary. After such inspections, the bin or granary shall be resealed with a seal bearing the name of the department of agriculture, labor, and industry of Montana, together with a number, and the number of such seal shall be made a matter of record in the office of the licensee applying the original seal and in the office of the commissioner.

History: En. Sec. 7, Ch. 174, L. 1931.

Compiler's Note

The department of agriculture, labor and industry has been divided into two separate departments; the department of agriculture headed by the commissioner of agriculture and the department of labor and industry headed by the commissioner of labor and industry. The reference in this section would be to the department of agriculture and the commissioner of agriculture. See Const., art. XVIII, sec. 1 and sec. 3-101.1.

3-608. (3592.51) **Duty of custodian.** The custodian of grain stored under special bin farm warehouse receipts shall be charged with the due care of such grain and shall exercise that degree of due care and diligence which an ordinary prudent man would exercise to similar property of his own.

The custodian shall also upon demand of the licensee issuing the warehouse receipt deliver said grain to the elevator of the licensee without charge.

History: En. Sec. 8, Ch. 174, L. 1931.

Collateral References

Warehousemen⇨24 (1).

93 C.J.S. Warehousemen and Safe Depositaries §§ 29-32.

56 Am. Jur. 378, Warehouses, § 126 et seq.

Liability of bailee for loss of or injury to goods kept at a place other than that originally intended. 12 ALR 1322 and 17 ALR 979.

Liability of warehouseman for damage to, or destruction of, property by fire. 16 ALR 280.

Liability of warehouseman for theft of property in his care. 26 ALR 223 and 48 ALR 378.

Warehouseman's bond as covering warehouse receipts issued by warehouse to itself or for its own property. 61 ALR 331.

Provision in warehouseman's receipt limiting liability as applicable where warehouseman converts property. 99 ALR 266.

Liability of warehouseman for deterioration of goods due to improper temperature. 92 ALR 2d 1298.

3-609. (3592.52) **Warehouse receipts—cancellation.** For the purpose of cancellation of any special bin farm warehouse receipt, it will be necessary that the holder thereof present the same to the issuing licensee for cancellation. The licensee shall stamp across the face of said receipt the words, "Surrendered and canceled."

The licensee shall notify the county clerk and recorder of the county in which the duplicate receipt is filed, to discharge any canceled receipt of record, and such county clerk and recorder is hereby required to cancel the same, without charge, upon such notice from the licensee. All original special bin farm warehouse receipts so canceled as above by the licensee, shall be retained in the files of his office and a permanent record of such receipt so canceled shall be kept; such record to show the name of the person or persons to whom the receipt was issued, the number of the receipt, the date of cancellation, and when the receipt canceled is one surrendered as paid, the name of the person so surrendering and canceling.

At any time during the life of a special bin farm warehouse receipt that the issuing licensee believes that the integrity of such receipt so demands such licensee is hereby authorized to demand delivery of said grain from the custodian thereof, and such custodian shall, upon receipt of notice to deliver, forthwith comply with such notice. Upon the failure or refusal on the part of the custodian to make delivery of grain covered by a special bin farm warehouse receipt as provided in this act, the licensee is hereby empowered to take possession of such grain and transport the same to his elevator. The cost of transporting the grain to the elevator shall be considered as advance and collected from the receipt-holder at the time of cancellation. Such possession may be taken, provided that there shall be no charge for storage thereon prior to the expiration of the storage period provided for in the receipt.

Failure on the part of the custodian to make delivery as directed shall be considered a misdemeanor.

History: En. Sec. 9, Ch. 174, L. 1931.

Collateral References

Warehousemen⇐13, 25 (3).

93 C.J.S. Warehousemen and Safe Depositaries §§ 18, 19, 51.

56 Am. Jur. 410, Warehouses, § 193 et seq.

Duty of warehouseman to take up and cancel negotiable receipt upon delivering goods as delegable or nondelegable. 139 ALR 1488.

3-610. (3592.53) **Penalty for breaking seal or removing or damaging stored grain.** Any person, except the licensed farm storage public warehouseman who has applied the same, or his successors, or any employee of the commissioner, who shall break the seal of any bin wherein grain is stored under the provisions of this act, or who shall break or enter the bin wherein said grain is stored, or who shall damage, remove or destroy any grain stored and sealed under this act, shall be guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the county jail for not less than one (1) year, or in the state penitentiary for not less than one (1) year, nor more than three (3) years, or by a fine of not less than three hundred dollars ($300.00) nor more than one thousand dollars ($1,000.00), and it shall be the duty of the commissioner, upon complaint or upon his own motion, to investigate any and all alleged violations of this act, and to prosecute the violators thereof.

History: En. Sec. 10, Ch. 174, L. 1931.

Collateral References

Warehousemen⇐37.

93 C.J.S. Warehousemen and Safe Depositaries §§ 87-89.

CHAPTER 7

BEAN WAREHOUSEMEN

Section 3-701. Administration and enforcement of act.
3-702. Definitions.
3-703. Scope of act.
3-704. License required of persons warehousing beans—fee—disposal of moneys—expiration date.
3-705. Form of application for license—qualifications—appeal on refusal.
3-706. Bond of applicant—conditions—fire insurance.
3-707. Suit on bond.

3-708. Fee for inspecting warehouse.
3-709. Records of bean dealer—contents—inspection—receipt.
3-710. Rules and regulations to be prescribed by commissioner.
3-711. Grading before storing required—specification on receipt.
3-712. Storage constitutes bailment—duty to keep beans in storage.
3-713. Records of warehousemen—reports.
3-714. Enforcement of act—investigations—hearings—orders of commissioner—appeals.
3-715. Penalties for doing business without license and other violations.

3-701. (3592.54) **Administration and enforcement of act.** The provisions of this act shall be administered and enforced by the commissioner of agriculture of the state of Montana.

History: En. Sec. 1, Ch. 164, L. 1935.

Collateral References
Agriculture⇨2.
3 C.J.S. Agriculture § 6.

3-702. (3592.55) **Definitions.** The following terms and words whenever used in this act, or in the rules and regulations later promulgated by the commissioner shall have the meaning as indicated.

(a) The word "commissioner" shall mean the commissioner of agriculture of the Montana department of agriculture.

(b) The words "warehouseman" or "person" shall mean dealer, shipper (except grower), society, association, organization, corporation or their agents or representatives.

(c) The word "beans" shall mean all varieties of the bean family (except green beans) whether grown or purchased for seed, feed or human consumption.

(d) The words "storage" or "warehousing" shall mean any method by which beans are held for any party, other than direct ownership, by the party doing the storing.

History: En. Sec. 2, Ch. 164, L. 1935.

93 C.J.S. Warehousemen and Safe Depositaries §§ 1, 2.

Collateral References
Warehousemen⇨2.

3-703. (3592.56) **Scope of act.** This act shall cover all transactions in beans and they shall not be handled, purchased, sold or stored under the provisions of any grain act.

History: En. Sec. 3, Ch. 164, L. 1935.

93 C.J.S. Warehousemen and Safe Depositaries §§ 8-10.

Collateral References
Warehousemen⇨8.

3-704. (3592.57) **License required of persons warehousing beans—fee—disposal of moneys—expiration date.** All persons engaged in the business of buying and selling at wholesale or warehousing and storing beans, or receiving or soliciting beans for purchase, sale or storage either within or without the state of Montana shall, before engaging in such business, procure a license from the commissioner and shall pay a license fee to the department of agriculture of Montana in the sum of fifteen dollars ($15.00), which shall be deposited with the treasurer of the state of Montana and credited to the general fund. Said licenses shall be renewed annually and

the prescribed fee shall be paid annually. All licenses shall be issued for the fiscal year or fraction thereof and ending June thirtieth next following.

History: En. Sec. 4, Ch. 164, L. 1935; amd. Sec. 32, Ch. 147, L. 1963.

Collateral References

Warehousemen⇐6.

93 C.J.S. Warehousemen and Safe Depositaries § 5.

3-705. (3592.58) **Form of application for license — qualifications — appeal on refusal.** The commissioner shall prescribe forms for application for such licenses and shall require from the applicant such facts and information as he may determine and as may seem appropriate to carry out the provisions of this act. The applicant must satisfy the commissioner as to his qualifications, warehouse and storage facilities, experience and financial ability to carry on the business of buying, selling, warehousing and storing, and upon furnishing evidence thereof satisfactory to the commissioner he may be granted or refused a license. Provided that if license is refused by the commissioner appeal may be made in accordance with the provisions in sections 84-3405, 84-3409, 84-3410, 84-3411 and 84-3412 of these codes.

History: En. Sec. 5, Ch. 164, L. 1935.

3-706. (3592.59) **Bond of applicant—conditions—fire insurance.** Every person applying for a license to engage in such business of buying, selling, warehousing or storing beans in accordance with this act shall, as a condition precedent to the granting thereof, execute and file with the commissioner a good and sufficient surety bond in the sum of five thousand dollars ($5,000.00) to the state of Montana, executed by a responsible surety company licensed to do business in this state, to be approved by the commissioner, conditioned upon the faithful performance of his obligations as a bean dealer or warehouseman under the laws of this state and as prescribed in this act, and of such additional obligations as may be assumed by him under contract with the respective depositors of the beans with him. The commissioner may from time to time require additional bond under penalty of revoking the license. Said bond shall otherwise be in such form and shall contain such additional conditions as the commissioner may prescribe to carry out the purposes of this act, and may, in the direction of the commissioner, include the requirements of fire insurance.

History: En. Sec. 6, Ch. 164, L. 1935.

93 C.J.S. Warehousemen and Safe Depositaries § 15.

Collateral References

Warehousemen⇐18, 22.

3-707. (3592.60) **Suit on bond.** Any person injured by the breach of any obligation to secure which a bond is given, as in this act provided, shall be entitled to sue on the bond in his own name in any court of competent jurisdiction to recover the damages he may have sustained in such breach, or where more than one (1) person has been so injured, the action may be brought in the name of the state of Montana on behalf of all such injured persons.

History: En. Sec. 7, Ch. 164, L. 1935.

3-708. (3592.61) **Fee for inspecting warehouse.** The commissioner shall charge, assess and cause to be collected a reasonable fee for every

examination or inspection of a warehouse under this act to be paid to the state department of agriculture and deposited as provided in section 3-704, provided that such fee shall not exceed ten dollars ($10.00) per annum.

History: En. Sec. 8, Ch. 164, L. 1935.

3-709. (3592.62) **Records of bean dealer—contents—inspection—receipt.** Every dealer in beans shall make and keep a full and complete record of all beans handled by him covering the following facts:

a. Name and address of the producer or shipper.
b. Date of receipt.
c. Kind, quantity, quality and grade of beans received.
d. Agreed purchase price if purchased.
e. Agreed storage price if stored.
f. Agreed commission charged if consigned.
g. Date of sale, to whom sold and price.
h. Date and details of settlement with vendor or consignor.

The above records shall be open to the confidential inspection of the commissioner or his authorized agents at all times. Every warehouseman shall issue a receipt for all beans received for storage on a form approved by the commissioner as provided in section 3-710.

History: En. Sec. 9, Ch. 164, L. 1935.

93 C.J.S. Warehousemen and Safe Depositaries § 7.

Collateral References

Warehousemen⊂⇒7.

3-710. (3592.63) **Rules and regulations to be prescribed by commissioner.** The commissioner shall prescribe such rules and regulations as he may deem necessary for the safe conduct of the business referred to in this act, including a scale of storage charges and storage receipts and to that end may, if he deems it necessary, require reports from any warehouseman or person receiving stored beans on blanks or forms that may be prepared by the commissioner.

History: En. Sec. 10, Ch. 164, L. 1935.

3-711. (3592.64) **Grading before storing required—specification on receipt.** All beans accepted for storage shall first be graded according to the standards of the United States department of agriculture and the grade so established shall be noted and specified upon the warehouse receipt issued for such beans.

History: En. Sec. 11, Ch. 164, L. 1935.

Collateral References

Inspection⊂⇒3.
44 C.J.S. Inspection § 4.

3-712. (3592.65) **Storage constitutes bailment—duty to keep beans in storage.** The storage of beans under the terms of this act shall constitute a bailment and upon the return of the warehouse receipt properly endorsed, and upon the payment or tender of all advances and legal charges, the holder of such warehouse receipt shall be entitled to, and it shall be compulsory for the warehouseman to deliver the identical grade and amount of beans so placed in storage. Every dealer, under the provisions of this act, shall maintain at all times in original storage beans equal in amount and grade

to all storage certificates issued, unless authorized in writing by holders of receipts or by the commissioner, to move to other storage, and failure to do shall constitute a conversion.

History: En. Sec. 12, Ch. 164, L. 1935.

Collateral References

Warehousemen⊂⊃10, 24 (4).

93 C.J.S. Warehousemen and Safe Depositaries §§ 12, 45.

Deposit of grain without obligation to return identical grain as a bailment or sale. 54 ALR 1166.

Storage contract as a bailment of chattels or lease of place where chattels are stored. 138 ALR 1137.

3-713. (3592.66) **Records of warehousemen — reports.** Every warehouseman or person operating under this act shall keep in a place of safety complete and correct records of all beans stored by him and of all beans withdrawn from storage; of all warehouse receipts issued by him; and of all the receipts returned to and canceled by him; and shall make such reports to the commissioner concerning such matters as may be required by the commissioner by rules and regulations established by him.

History: En. Sec. 13, Ch. 164, L. 1935.

Collateral References

Tort liability of warehouseman for theft by servant. 15 ALR 2d 847.

3-714. (3592.67) **Enforcement of act—investigations—hearings—orders of commissioner—appeals.** For the purpose of enforcing the provisions of this act, the commissioner upon his own motion may, or upon verified complaint against any dealer or any person, firm, exchange, association or corporation assuming or attempting to act as such, shall have authority to, and must make any and all investigations he deems necessary, and he shall at all times have free and unimpeded access to all buildings, yards, warehouses, storage and transportation or any other facilities or places in which beans are kept, stored, handled or transported. If the commissioner, upon investigation, shall have reason to believe that any dealer is not acting in accordance with the provisions of this act, or upon the filing of a verified complaint against any dealer, it shall be the duty of the commissioner to have personal service made upon said dealer, or to mail by registered mail a complaint, or a copy of the verified complaint against said dealer, and in the event the dealer fails to make formal adjustment or settlement of the charges set forth therein, to the satisfaction of the commissioner, the commissioner shall give notice of the time and place of a formal hearing thereon. Notice of any hearing shall be given at least twenty (20) days prior thereto and said hearing shall be held in the city or town in which the transaction complained of is alleged to have occurred.

He shall have full authority to administer oaths and take testimony thereunder, to issue subpoenas requiring the attendance of witnesses before him, together with all books, memoranda, papers, and other documents, articles or instruments; to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation; and all parties disobeying the orders of subpoenas of said commissioner shall be guilty of contempt and shall be certified to any district court of the state, which court shall punish any such contempt. Copies of records, inspection certificates, certified reports and all papers on file in the office of the commissioner shall be prima facie evidence of the matters therein contained.

At the time and place appointed for such hearing the commissioner shall hear all parties and their evidence and thereupon the commissioner shall dismiss the charges, or suspend the license of the dealer for a specified time, or revoke the same, or make such other appropriate order as he may deem just and proper; any order shall specify the effective date thereof and any order other than the one suspending or revoking a license shall automatically suspend such license until such order is complied with. Provided, that an appeal may be made from the decision of the commissioner according to the provisions of sections 84-3405, 84-3409, 84-3410, 84-3411 and 84-3412 of these codes.

History: En. Sec. 14, Ch. 164, L. 1935.

3-715. (3592.68) **Penalties for doing business without license and other violations.** Any person who shall engage in or carry on any business or occupation for which a license is required by this act without first having obtained a license therefor, or who shall continue to engage in or carry on any such business or occupation after such license has been revoked or expired, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00), and each and every day that such business or occupation is so carried on or engaged in shall be a separate offense. Any person who shall otherwise violate any of the provisions of this act, or shall by any manner or means convert to his own use, or that of another, any beans so stored or accepted for storage shall, if the value of such converted beans exceed five hundred dollars ($500.00), be deemed guilty of a felony; and if the value is less than five hundred dollars ($500.00) be deemed guilty of a misdemeanor, and in either case upon conviction, shall be punished by fine or imprisonment, or both, as otherwise provided by law.

History: En. Sec. 15, Ch. 164, L. 1935.

Collateral References

Warehousemen⇐36.

93 C.J.S. Warehousemen and Safe Depositaries § 88.

CHAPTER 8

AGRICULTURAL SEEDS

Section 3-801. Definitions.
3-802. Labeling of agricultural seed.
3-803. Exception of seeds, when.
3-804. Penalty.
3-805. Inspection by director of state grain and seed laboratory—reports—enforcement.
3-806. Employment and payment of inspection agents.
3-807. Samples may be sent to the laboratory for testing.
3-808. Certificate of test presumptive evidence.
3-809. Certified seeds—advertisement—definition.
3-810. Rules and regulations by Montana state college—certification agencies.
3-811. Certification work on self-supporting basis.
3-812. College exempt from liability.
3-813. Withholding certification.
3-814. Unlawful use of certification—penalty.
3-815. Montana seed laws not repealed.
3-816. Vegetable or flower seeds—labeling required.
3-817. Inspection of vegetable and flower seeds by director of state grain and seed laboratory—reports—enforcement.
3-818. Prohibitions.
3-819. Penalty.

3-801. (3593) **Definitions.** Terms used in this act and not otherwise identified, are hereby defined:

1. The term "agricultural seeds" or "agricultural seed" shall include the seeds of the legumes, such as alfalfa, clovers, sweet clover, field and canning peas, field beans, vetches, and soy beans; the grasses, such as the bluegrasses, timothy, redtop, brome grasses, canary grass, fescues, oatgrass, orchard-grass, ryegrasses, and wheat grasses; the cereals, such as wheat, oats, barley, rye, corn, and hybrid corn; and miscellaneous crops such as rape, buckwheat, millet, sorghums, mustard, flax; together with seeds of any other crops that may be raised as field crops in Montana, when such are sold, offered, or exposed for sale within this state, country or territory, for seeding purposes within this state.

2. (a) The term "weed seeds" shall include the seeds or bulblets of all plants generally recognized as weeds within this state, and shall include noxious weed seeds.

(b) Noxious weed seeds are hereby divided into three groups, defined in paragraphs (1), (2), and (3) of this subsection, as follows:

(1) Group I "noxious weed seeds" are the seeds of perennial weeds such as not only reproduce by seed, but also spread by underground roots or stems, and which, when established, are highly destructive and difficult to control in this state by ordinary good cultural practice. Group I, "noxious weed seeds" are the seeds of,

Canada Thistle	(Cirsium arvense)
	(Carduus arvensis)
Leafy Spurge	(Euphorbia esula)
White Top	(Lepidium (Cardaris) draba)
Perennial peppergrass	(Cararia repens)
(Hoary cress)	(Hymenophysa (Cardaria) pubescens)
Quack Grass	(Agropyron repens)
Russian Knapweed	(Centaurea picris)
	(Centaurea repens)
Perennial Sow Thistle	(Sonchus arvensis)
Wild Morning Glory (Field Bindweed)	(Convolvulus arvensis)

(2) Group II, "noxious weed seeds" are the seeds of such weeds as are very objectionable in fields, lawns, or gardens of the state of Montana, but which can be controlled by good cultural practice. Group II, "noxious weed seeds" of the state of Montana are the seeds of,

Dodder	(Cuscuta Spp.)
Blue Flowering Lettuce	(Lactuca pulchella)
St. Johnswort (Klamath-weed)	(Hypericum perforatum)
White horsenettle (Silver Leaf nightshade)	(Solanum elaeagnifolium)
Wild Onion (Wild Garlic)	(Allium vineale)
Ox-eye Daisy	(Chrysanthemum leucanthemum)

(3) Group III, "noxious weed seeds" are the seeds of such weeds as are a menace to agriculture but are less serious than those included in Group II of this classification. Group III, "noxious weed seeds" are the seeds of,

Buckhorn	(Plantago Lanceolata)
Wild Mustard	(Brassica Supp.)
Fan Weed (French Weed)	(Thlaspi Arvense)
Sheep Sorrell	(Rumex Acestosella)
Curled Dock	(Rumex Crispus)
Wild Oats	(Avena fatua)

3. The terms "approximate percentage" and "approximate number" shall mean the percentage or number with the variations above or below as allowed according to the tolerance limits defined in the "rules for seed testing" adopted by the Association of Official Seed Analysts of North America.

4. The term "percentage of germination" shall mean the percentage of seeds which show normal sprouts as evidence of vitality when such seeds are subjected to the proper moisture and temperature conditions with proper aeration for the customary length of time for each specific kind of such seed, as specified in the "rules for seed testing" adopted by the Association of Official Seed Analysts of North America.

5. The term "name of state in which such seed was grown" shall mean any of the several states of the United States or the foreign country.

6. The term "other crop seeds" shall mean any agricultural seeds other than the seed or the mixture of agricultural seeds under consideration.

7. The term "sell" shall include "offer for sale," "expose for sale," "have in possession for sale," "exchange," "barter," or "trade." It shall also include agricultural seeds which are furnished to growers for the production of a crop on contract.

History: En. Sec. 1, Ch. 12, L. 1913; re-en. Sec. 3593, R. C. M. 1921; amd. Sec. 2, Ch. 88, L. 1939; amd. Sec. 1, Ch. 155, L. 1951.

Mustard Seed as Grain

Mustard seed is a grain and subject to the provisions of the Warehouse Receipts Act. Northern Montana Mustard Growers' Co-operative v. Britton, 128 M 553, 280 P 2d 1078, 1085.

Collateral References

Agriculture⇐1.
3 C.J.S. Agriculture § 3.

Federal and state agricultural adjustment acts. 92 ALR 1482; 98 ALR 1195; 102 ALR 937 and 114 ALR 136.

3-802. (3594) **Labeling of agricultural seed.** The owner, vendor, or person in possession of each and every package, parcel, or lot of agricultural seeds, as defined in the preceding section, which contains one (1) pound, or more, of such agricultural seeds, whether in package or in bulk, shall before offering such seeds for sale affix thereto, in a conspicuous place on the exterior of the container of such agricultural seeds, a written or printed label in the English language in legible type or copy, such label containing a statement specifying:

1. A lot number or other distinguishing mark; the commonly accepted name of the kind or kinds of such agricultural seed, together with the

variety name, and if such is not known, the fact must be so stated by using the word "unknown."

1a. Name of state, country or territory, in which such agricultural seed was grown.

2. The approximate percentage of germination of such agricultural seed, together with the date of test of germination. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately; with the provision that any portion or all of the percentage of such hard seeds may be added to the percentage of germination, and stated as "total live seed."

3. The approximate percentage, by weight, of pure seed; meaning the freedom of such agricultural seeds from inert matter and from other seeds.

4. The approximate percentage, by weight, of sand, dirt, broken seeds, sticks, chaff, and other inert matter combined in such agricultural seeds.

5. The approximate total percentage by weight of weed seeds.

5a. The approximate percentage by weight of other crop seeds in such agricultural seeds.

6. The name, and the approximate number, per pound of agricultural seed, of each kind or species of noxious weed seeds specified in Groups I, II and III, section 3-801, subparagraphs (1), (2) and (3) of paragraph 2 thereof, as follows:

Group I, noxious weed seeds, the name or names of each of the noxious weed seeds present, and the number thereof, singly or collectively, per pound of agricultural seed, in numbers less than one (1) noxious weed seed in fifty (50) grams of agricultural seed. If such numbers of Group I noxious weed seeds exceed one (1) in fifty (50) grams of seed, such seed shall not be sold within the state of Montana.

Group II, noxious weed seeds, the name or names of each of the noxious weed seeds present, and the number thereof, singly or collectively per pound of seed, in excess of one (1) noxious weed seed in fifty (50) grams of agricultural seed.

Group III, noxious weed seeds, the name or names of each of the noxious weed seeds present, and the number thereof, singly or collectively, per pound of seed, in excess of one (1) noxious weed seed in ten (10) grams of agricultural seed.

7. The full name and address of the seedsman, importer, dealer or agent or of other persons or person, firm or corporation selling, offering, or exposing the said agricultural seed for sale.

8. Mixtures of agricultural seeds which contain two (2) or more kinds of such seeds in excess of five per cent (5%) by weight of each, when sold, offered, or exposed for sale as mixtures, shall have affixed thereto, in a conspicuous place on the exterior of the container of such mixtures of seeds, a plainly written or printed tag or label in the English language, stating:

(a) Name of mixture.

(b) The name and approximate percentage by weight of each kind of agricultural seed present in such mixture in excess of five per cent (5%) by weight of the total mixture.

(bb) Approximate percentage by weight of broken seeds and other inert matter in such mixture of agricultural seeds.

(c) Approximate percentage by weight of weed seeds as defined in subdivision 2 of section 3-801.

(cc) Approximate percentage by weight of other crop seed in such mixture of agricultural seeds.

(d) The name and approximate number per pound of each kind of the seeds or bulblets of the noxious weeds listed in subdivision 2, of section 3-801, which are present, singly or collectively, in excess of nine (9) seeds or bulblets per pound.

(e) Approximate percentage of germination of each kind of agricultural seed present in such mixture in excess of five per cent (5%) by weight, together with the month and year said seed was tested. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated, separately; with the provision that any portion or all of such hard seed may be added to the percentage of germination and stated as "total live seed."

(f) Full name and address of the vendor of such mixture.

(g) When space is provided on labels appearing on seed, providing for the insertion of specific items relative thereto and such spaces are left open, the blank space or spaces shall be deemed to imply that the word "none" was intended, when such interpretation is reasonable.

9. The commissioner of agriculture of the state of Montana shall prescribe the form and outline text of all labels to be used as provided for in this section.

10. Prohibition of sales of certain seeds. It shall be unlawful for any person, firm, copartnership, corporation or association to sell, or to offer for sale, or to expose or display for sale, any agricultural seed within the state of Montana, irrespective of the place of origin of such seed, which contains noxious weed seeds of any one, or more, of said groups of noxious weed seeds as follows:

(1) Group I, noxious weed seeds in excess of nine (9) such seeds per pound of agricultural seed; or

(2) Group II, noxious weed seeds in excess of nine (9) such seeds per pound of agricultural seeds, unless stated on the analysis tag or label; or

(3) Group III, noxious weed seeds in excess of forty-five (45) such seeds per pound of agricultural seed unless stated on the analysis tag or label; or

(4) Any agricultural seed containing in excess of two per centum (2%) or more of weed seed; or

(5) Any agricultural seed which has a germination test dated more than nine (9) calendar months prior to date of sale.

(6) In mixtures represented by printed labeling, by pictorial illustrations, or in any manner whatsoever, to be for lawn seeding purposes, unless they contain at least fifty per cent (50%) pure seed of perennial fine-leaved species which shall be specified by rules and regulations pursuant to this act. Provided, however, grass mixtures which do not contain fifty per cent (50%) pure seed of perennial fine-leaved grasses may be

sold. Provided further that when in packages of twenty-five (25) pounds or less, they shall carry the statements "Not recommended for a fine-leaved perennial turf. Satisfactory for a temporary ground cover or where coarse grass is not objectionable."

A definition of fine-leaf varieties to be promulgated in the regulations is as follows:

(a) Bluegrasses—all varieties except Canada Bluegrass (Poa Compressa);

(b) Chewings Red Fescue and all improved varieties;

(c) Creeping Red Fescue and all improved varieties;

(d) Bentgrass—all varieties.

11. Commissioner's right to revise or amend. The commissioner of agriculture may, with the written approval of the director of the Montana experiment station recorded prior to or within ten (10) days after the public hearing, prescribed herein, add to or remove from, revise, or modify the foregoing groups and classifications of noxious weed seeds, and the noxious weed seeds within any groups or classifications, as the circumstances may require in aid of the purpose of this act to prevent or diminish the distribution and occurrence of such noxious weed seeds within the state of Montana, but no additions, removals or modifications shall be made without a full public hearing, on adequate and informative written or published notice plainly stating the exact additions, removals or modifications proposed to be made, and said notice shall be given by the commissioner at least thirty (30) days before the day set for said hearing and shall state the time and place of said hearing, and said notice shall be published in three (3) newspapers of general circulation in the state, and such notice shall be mailed to all associations of seed dealers in the state who are organized on a state-wide basis. If any revision or modification is determined to be made as a result of any such hearing, the same shall be promulgated by a written order of the commissioner, countersigned "approved" by the director of the Montana experiment station, plainly stating the revisions or modifications and the effective date or dates thereof, and any and all qualifications, exceptions or conditions connected with such revisions or modifications.

History: En. Sec. 2, Ch. 12, L. 1913; re-en. Sec. 3594, R. C. M. 1921; amd. Sec. 1, Ch. 110, L. 1929; amd. Sec. 1, Ch. 192, L. 1937; amd. Sec. 3, Ch. 88, L. 1939; amd. Sec. 2, Ch. 155, L. 1951; amd. Sec. 1, Ch. 168, L. 1961.

Collateral References

Agriculture⇨16.

3 C.J.S. Agriculture § 5.

3 Am. Jur. 2d 818, Agriculture, § 50.

Warranties and conditions upon sale of seed, nursery stock, etc. 16 ALR 859; 32 ALR 1241; 62 ALR 451; 117 ALR 470 and 168 ALR 581.

Constitutionality of requirement of disclosure by label of materials or ingredients of articles sold or offered for sale. 57 ALR 686.

3-803. (3595) **Exception of seeds, when.** Agricultural seeds or mixtures of same shall be exempt from the provisions of this act:

(1) When possessed, exposed for sale, or sold for food purposes only.

(2) When sold to merchants or dealers to be recleaned before being sold or offered for sale for seeding purposes.

(3) When in store for the purpose of recleaning or not possessed, sold or offered for sale for seeding purposes within the state.

(4) When sold by a processor of sugar beets to growers contracting the growing and delivery of sugar beets to such vendor or distributor.

History: En. Sec. 3, Ch. 12, L. 1913; re-en. Sec. 3595, R. C. M. 1921; amd. Sec. 4, Ch. 88, L. 1939.

3-804. (3596) **Penalty.** Any person, firm, or corporation who sells, offers or exposes for sale or distribution in the state any agricultural seeds for seeding purposes, without complying with the requirements of this act, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars ($25.00), nor more than one hundred dollars ($100.00) and costs of such prosecution, and upon conviction of the second or any subsequent offense shall be fined not less than fifty dollars (($50.00) nor more than five hundred dollars ($500.00) and costs of such prosecution.

History: En. Sec. 4, Ch. 12, L. 1913; 2, Ch. 110, L. 1929; amd. Sec. 5, Ch. 88, re-en. Sec. 3596, R. C. M. 1921; amd. Sec. L. 1939.

3-805. (3597) **Inspection by director of state grain and seed laboratory —reports—enforcement.** The director of the Montana grain inspection laboratory, of the Montana agricultural experiment station, his agent, or agents, shall inspect, examine, or make analyses of and test seeds sold, offered or exposed for sale in the state at such time and place and to such an extent as he and the commissioner of agriculture may determine. Such director shall report to the commissioner of agriculture all violations as they appear. He shall also annually and not later than September first, make a report to the commissioner of agriculture of all tests made and the results thereof, which report may be published by the commissioner of agriculture, separately, or along with any other annual or biennial report of the department. Such director, his agent or agents, and the commissioner of agriculture and his authorized representatives shall have free access at all reasonable hours to all premises or structures to make examination of any seeds, or any other premises of any warehouse, elevator, or railway company, and upon tendering payment thereof, at the current value, may take any sample or samples of such seeds.

It is hereby made the duty of the commissioner of agriculture of the department of agriculture to administer and enforce this act. For that purpose, he is hereby empowered to make all proper rules and regulations not inconsistent with this act or any federal laws now in effect or which may hereafter be enacted. To aid in the enforcement, he or his agents shall have power to issue and enforce a written or printed "stop sale" order to the owner or custodian of any lot of agricultural seed which the commissioner of agriculture or his agent finds in violation of any of the provisions of this act, which order shall prohibit further sale of such seed until such officer has evidence that the law has been complied with. The seed shall not be confiscated nor destroyed and upon proper correction, by reprocessing, labeling or otherwise, and when in the judgment of the commissioner of agriculture, the requirements of this act have been met, the stop sale order shall be lifted and the seed be permitted to be sold in the regular channels of trade. The director of the Montana grain inspection laboratory of the Montana agricultural experiment station shall formulate

all necessary and proper rules and regulations relating to all his duties enumerated herein.

History: En. Sec. 5, Ch. 12, L. 1913; re-en. Sec. 3597, R. C. M. 1921; amd. Sec. 6, Ch. 88, L. 1939; amd. Sec. 3, Ch. 155, L. 1951.

Collateral References

Inspection⚖4.
44 C.J.S. Inspection § 9.
3 Am. Jur. 2d 816, Agriculture, §§ 48-50.

3-806. (3598) **Employment and payment of inspection agents.** The director of the Montana grain inspection laboratory, under the direction of the director of the Montana agricultural experiment station, may employ such agents as are deemed necessary to each year inspect, sample and make analysis of any agricultural seed on sale in the state for seeding purposes within the state, and the salaries and necessary expenses of such agents, together with the cost of publishing the findings of such inspections and analyses, shall be paid out of moneys appropriated for the Montana grain inspection laboratory, of the Montana agricultural experiment station.

History: En. Sec. 6, Ch. 12, L. 1913; re-en. Sec. 3598, R. C. M. 1921; amd. Sec. 7, Ch. 88, L. 1939.

Collateral References

Inspection⚖4.
44 C.J.S. Inspection §§ 10, 11.

3-807. (3599) **Samples may be sent to the laboratory for testing.** Any citizen of the state of Montana may request the Montana grain inspection laboratory of the Montana experiment station to examine, analyze and test samples of seed upon payment of the fee thereof and compliance with the regulations promulgated by the director of the state grain inspection laboratory governing the submission of seed samples for such service. Samples of seed analyzed and tested, shall be charged for at rates determined jointly by the commissioner of agriculture, the director of the Montana agricultural experiment station, and the director of the Montana grain inspection laboratory. All such fees are hereby appropriated for the use and benefit of the Montana grain inspection laboratory of the Montana agricultural experiment station to defray the expenses incurred by said laboratory, under the provisions of this act.

History: En. Sec. 7, Ch. 12, L. 1913; re-en. Sec. 3599, R. C. M. 1921; amd. Sec. 2, Ch. 192, L. 1937; amd. Sec. 8, Ch. 88, L. 1939; amd. Sec. 1, Ch. 85, L. 1949; amd. Sec. 4, Ch. 155, L. 1951.

3-808. (3600) **Certificate of test presumptive evidence.** The certificate of the Montana grain inspection laboratory of the Montana agricultural experiment station, giving results of any examinations, analyses or tests of any seed samples made under the authority of the commissioner of agriculture of the department of agriculture, labor and industry shall be presumptive evidence of the correctness of the facts therein stated.

History: En. Sec. 8, Ch. 12, L. 1913; re-en. Sec. 3600, R. C. M. 1921; amd. Sec. 9, Ch. 88, L. 1939.

Compiler's Note

The department of agriculture, labor and industry has been divided into two separate departments; the department of agriculture headed by the commissioner of agriculture and the department of labor and industry headed by the commissioner of labor and industry. The reference in this section would be to the department of agriculture and the commissioner of agriculture. See Const., art. XVIII, sec. 1 and sec. 3-101.1.

3-809. Certified seeds—advertisement—definition. Every person, firm, association, or corporation who shall issue, use, or circulate any certificate,

advertisement, tag, seal, poster, letterhead, marking, circular, written or printed representation or description, of or pertaining to seeds or plant parts intended for propagation or sale, or sold or offered for sale wherein the words "Montana State Certified," "State Certified," "Montana Certified," or similar words or phrases are used or employed, shall be subject to the provision of this act. Every issuance, use or circulation of any certificate and/or other instrument, as in this section above described, shall be deemed to be "certification" as that term is employed in this act.

History: En. Sec. 1, Ch. 11, L. 1951.

3-810. Rules and regulations by Montana state college—certification agencies. Every person, firm, association, or corporation subject to the provisions of this act shall observe, perform or comply with all rules, regulations and requirements fixed, established or specified by Montana state college, hereafter referred to as the college, as to what crops grown or to be grown in Montana shall be eligible for certification hereunder, as to the conduct of such certification, either by said college directly or by agents or agencies authorized by it for the purpose, and as to standards, requirements and forms of and for certification hereunder; provided, however, that not more than one such agent or agency for certification shall be designated for any one specified crop. No certification, within the provisions of the act shall be made or authorized except by or through said college.

History: En. Sec. 2, Ch. 11, L. 1951.

3-811. Certification work on self-supporting basis. Certification work, whether conducted by said college or by an agency designated by it, shall be on a self-supporting basis and not for financial profit.

History: En. Sec. 3, Ch. 11, L. 1951.

3-812. College exempt from liability. The said college shall not be financially responsible for debts incurred by damages, or contracts broken by certifying agencies in conducting certification work.

History: En. Sec. 4, Ch. 11, L. 1951.

3-813. Withholding certification. The said college or its designated agency or agencies, may withhold certification from any grower of seeds or plant parts who is engaged in or attempting to engage in any dishonest practices for the purpose of evading the provisions of this act, including standards, rules and regulations laid down by the said college or its designated agency or agencies to cover certification.

History: En. Sec. 5, Ch. 11, L. 1951.

3-814. Unlawful use of certification—penalty. It shall be unlawful for any person, firm, association or corporation to issue, make, use or circulate any certification as defined in this act, without the authority and approval of the said college, or its duly authorized agency, as herein provided. Every person, firm, association, or corporation who shall violate any of the provisions of this act pertaining to certification shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not

less than one hundred dollars ($100.00) nor exceeding five hundred dollars ($500.00) for each offense.

History: En. Sec. 6, Ch. 11, L. 1951.

3-815. Montana seed laws not repealed. Nothing contained in this act shall be construed to repeal any provisions of the Montana state seed laws.

History: En. Sec. 7, Ch. 11, L. 1951.

3-816. Vegetable or flower seeds—labeling required. Any individual, firm, partnership, association, corporation or other group selling, offering to sell, or possessing for sale at wholesale or retail vegetable or flower seeds, within the state of Montana must, whether in package or in bulk, affix thereto in a conspicuous place on the exterior of the container of such seeds, a written or printed label or tag in the English language in legible type, script or copy, such label containing a statement specifying:

Each container of less than one pound:

1. Kind and variety of seed.

2. With the name and address of the person who labeled the seed or who sells, offers or exposes such seed for sale within this state.

3. With the name and number per pound of each kind of restricted noxious weed seed.

4. In the case of vegetable seed which has a percentage of germination less than the standard prescribed in the Federal Seed Act of 1960 with subsequent revisions:

(a) The percentage of germination.

(b) The percentage of hard seed, if more than one per cent.

(c) The month and year the test was made.

(d) The words, "below standard germination," in not less than eight point boldface type.

5. Vegetable or flower seed containing any weed seeds in the "Prohibited List" shall not be sold in the state of Montana.

Each container of one pound or more:

1. Kind and variety of seed.

2. The lot number or other lot identification.

3. The name and number per pound of each kind of restricted noxious weed seed.

4. The percentage of germination.

5. The percentage of hard seed, if more than one per cent.

6. The month and year the test was made.

7. The name and address of the person who labeled such seed or who sells, offers or exposes such seed for sale within this state.

8. Vegetable or flower seed containing any weed seeds in the "Prohibited List" shall not be sold in the state of Montana.

Vegetable or flower seed containing weed seeds in the "Restricted List" may be sold in the state of Montana if weed seeds present are not in excess of one-half per cent (½%) by weight of vegetable or flower seed. Vegetable or flower seed containing weed seeds not in either the prohibited or restricted lists may be sold in the state of Montana if total weed seeds present are not in excess of two per cent (2%) by weight of vegetable or flower seed. The name or names of all restricted weed seed species present,

and the number thereof, singly or collectively, per pound of vegetable or flower seed, shall appear on the label or tag.

Prohibited List

Canada Thistle
(Cirsium arvense)
(Carduus arvensis)
Leafy spurge
(Euphorbia esula)
White Top
(Lepidium Cardaris draba)
Perennial peppergrass
(Cararia repens)
Hoary cress
(Hymenophysa (Cardaria) pubescens)
Quackgrass
(Agropyron repens)
Russian knapweed
(Centaurea picris)
(Centaurea repens)
Perennial Sow Thistle
(Sonchus arvensis)
Wild Morning Glory (Field Bindweed) (Convolvulus arvensis)
Toadflax
(Linaria dalmatica)
Creeping bellflower
(Campanula rapunculoides)

Restricted List

Dodder
(Cuscuta spp.)
Blue Flowering Lettuce
(Lactuca pulchella)
St. Johnswort (Klamathweed)
(Hypericum perforatum)
Wild Onion (Wild Garlic)
(Allium vineale)
Ox-eye Daisy
(Chrysanthemum leucanthemum)
Halogeton
(Halogeton glomeratus)
Medusa-head wildrye
(Elymus Caput-Medusea)
Spotted knapweed
(Centaurea maculosa)
Hoary false alyssum
(Berteroa incanna)
Common toadflax
(Linaria vulgaris)
Wild Oats
(Avena fatua)
Curled Dock
(Rumex crispus)
Chickweed
(Stellaria spp.)
Plantain
(Plantago spp.)
Dandelion
(Taraxacum officinale)
Crabgrass
(Digitaria ischaemum)

9. The full name and address of the seedman, importer, dealer or agent or of other persons or person, firm or corporation selling, offering, or exposing the said vegetable or flower seed for sale.

History: En. Sec. 1, Ch. 196, L. 1961.

3 C.J.S. Agriculture § 5.
3 Am. Jur. 2d 818, Agriculture, § 50.

Collateral References
Agriculture⇨16.

3-817. Inspection of vegetable and flower seeds by director of state grain and seed laboratory—reports—enforcement. The director of the Montana grain inspection laboratory, of the Montana agricultural experiment station, his agent, or agents, shall inspect, examine, or make analyses

of and test vegetable or flower seeds sold, offered or exposed for sale in the state at such time and place and to such an extent as he and the commissioner of agriculture may determine. Such director shall report to the commissioner of agriculture all violations as they appear. He shall also annually and not later than September first, make a report to the commissioner of agriculture of all tests made and the results thereof, which report may be published by the commissioner of agriculture, separately, or along with any other annual or biennial report of the department. Such director, his agent or agents, and the commissioner of agriculture and his authorized representatives shall have free access at all reasonable hours to all premises or structures to make examination of any seeds, or any other premises of any warehouse, elevator, or railway company, and upon tendering payment thereof, at the current value, may take any sample or samples of such seeds.

It is hereby made the duty of the commissioner of agriculture of the department of agriculture to administer and enforce this act. For that purpose, he is hereby empowered to make all proper rules and regulations not inconsistent with this act or any federal laws now in effect or which may hereafter be enacted. To aid in the enforcement, he or his agents shall have power to issue and enforce a written or printed "stop sale" order to the owner or custodian of any lot of vegetable or flower seed which the commissioner of agriculture or his agent finds in violation of any of the provisions of this act, which order shall prohibit further sale of such seed until such officer has evidence that the law has been complied with. The seed shall not be confiscated nor destroyed and upon proper correction, by reprocessing, labeling or otherwise, and when in the judgment of the commissioner of agriculture, the requirements of this act have been met, the stop sale order shall be lifted and the seed be permitted to be sold in the regular channels of trade. The director of the Montana grain inspection laboratory of the Montana agricultural experiment station shall formulate all necessary and proper rules and regulations relating to all his duties enumerated herein.

History: En. Sec. 2, Ch. 196, L. 1961.

3-818. Prohibitions. (a) It shall be unlawful to sell, offer or expose for sale any vegetable or flower seed within this state:

1. Not labeled as required herein, or having a false or misleading label;
2. Seed to which there has been false or misleading advertisement;
3. Unless the test to determine the percentage germination shall have been completed within nine months, exclusive of the calendar month in which the test was completed prior to the sale, offering for sale, or exposure for sale;
4. Containing weed seeds in the prohibited list;
5. Containing weed seeds in the restricted list in excess of one-half per cent (½%) by weight of vegetable or flower seed;
6. Containing a total of all weed seeds in excess of two per cent (2%) of the whole by weight;

(b) It shall be unlawful for any individual, firm, partnership, association, or corporation within this state:

1. To detach, alter, deface, or destroy any label provided for in this act or the rules and regulations made and promulgated hereunder, or to

alter or substitute seed, in a manner that may defeat the purposes of this act;

2. To disseminate any false or misleading advertisement concerning vegetable or flower seeds in any manner or by any means;

3. To hinder or obstruct in any way any authorized person in the performance of his duties, under this act;

4. To fail to comply with a "stop sale" order.

History: En. Sec. 3, Ch. 196, L. 1961.

3-819. Penalty. Any person, firm, or corporation who sells, offers or exposes for sale or distribution in the state any flower or vegetable seeds for seeding purposes, without complying with the requirements of this act, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars ($25.00), nor more than one hundred dollars ($100.00) and costs of such prosecution, and upon conviction of the second or any subsequent offense shall be fined not less than fifty ($50.00) nor more than five hundred dollars ($500.00) and costs of such prosecution.

History: En. Sec. 4, Ch. 196, L. 1961.

CHAPTER 9

SEALERS OF GRAIN

Section 3-901. Purpose of act.
3-902. Appointment of sealer of grain by farm storage commissioner.
3-903. Certificate of sealer—contents—filing—sealing of grain container.
3-904. Filing fee of commissioner—use of funds.
3-905. Breaking of seals or removal of grain a felony.
3-906. Seizure of sealed grain—notice to commissioner.

3-901. (3602.1) **Purpose of act.** The purpose and object of this act is to aid, assist and facilitate any loaning corporation, association or agency created by or under authority of the acts of the Congress of the United States for the purpose of aiding agriculture, in loaning money upon the security, in whole or in part, of grain stored on farms or other suitable places, and to aid, assist and facilitate the owners of said grain to obtain loans from the said corporations, associations or agencies.

History: En. Sec. 1, Ch. 111, L. 1933.

Collateral References

Agriculture⇐3.
3 C.J.S. Agriculture §§ 8-10.

3-902. (3602.2) **Appointment of sealer of grain by farm storage commissioner.** In addition to the powers conferred upon the farm storage commissioner by sections 3-401 through 3-420, the said farm storage commissioner may, upon the request of any such corporation, association or agency, appoint a person or persons designated by it as a sealer or sealers of grain and when so appointed he, or they, shall serve without pay and hold office at the will of the said commissioner. Said sealer or sealers appointed under the terms of this act shall exercise the duties herein prescribed only when the owner of the grain to be sealed has obtained, or has applied for, a loan from such corporation, association, or agency, secured, or to be secured, wholly or in part by a mortgage upon such grain.

History: En. Sec. 2, Ch. 111, L. 1933.

Compiler's Note
Section 3-407, included in the reference to sections 3-401 through 3-420 in the first sentence of this section, was repealed by Sec. 51, Ch. 177, Laws 1965.

3-903. (3602.3) **Certificate of sealer—contents—filing—sealing of grain container.** Whenever requested by the owner of any grain who has obtained or applied for a loan from any such corporation, association or agency, which loan has been, or is to be, secured wholly or in part by a mortgage upon said grain, the said corporation, association, or agency concurring in said request, the sealer shall ascertain the kind of grain which the owner has in store on his farm or at any other suitable place, and the quantity thereof, which shall be determined in the presence of the owner, and said sealer shall at the time of sealing the same make a certificate in triplicate showing the name and address of the owner, the amount of grain stored, the place where stored, a description of the building, room or container in which it is stored, the quantity stored, and that the grain and quantity shown were sealed by him in the building, room or container described. The certificate must also bear a signed statement by the owner that he requested the sealing to be done, that he was present at the time of the sealing, that the matters and things stated in the certificate are true of his own knowledge, that the grain was sealed in his presence, and that he is the sole owner of the grain. If there be more than one owner the statement must be signed by each of the owners. Blank certificates shall be furnished by the farm storage commissioner, and one of said executed certificates shall be filed in the office of the farm commissioner, one shall be delivered to the owner of the grain and the other to the said corporation, association, or agency from which the loan has been, or will be obtained. The sealer must, at the time the said certificate is executed, seal the building, room or container containing said grain with seals provided by the farm storage commissioner.

History: En. Sec. 3, Ch. 111, L. 1933.

3-904. (3602.4) **Filing fee of commissioner—use of funds.** The farm storage commissioner shall collect the sum of fifty cents for filing the certificate in his office and the funds so derived shall be deposited in the state treasury to the credit of the general fund.

History: En. Sec. 4, Ch. 111, L. 1933;
amd. Sec. 33, Ch. 147, L. 1963.

3-905. (3602.5) **Breaking of seals or removal of grain a felony.** Any person who shall willfully break any of said seals so affixed by the sealer or willfully remove the grain, or any part thereof, in any manner from the building, room or container wherein it is stored and sealed, except by authority in writing granted by the corporation, association or agency to which said grain is, or is to be, mortgaged, shall be deemed guilty of a felony, and upon conviction be punished by imprisonment in the Montana state prison for a period of not less than one year nor more than five years, or a fine of not to exceed five thousand dollars, or both.

History: En. Sec. 5, Ch. 111, L. 1933.

3-906. (3602.6) **Seizure of sealed grain—notice to commissioner.** The foregoing sections shall not apply to any officer seizing said grain under process from a court of competent jurisdiction nor to any person or his agent who may seize the same under or by virtue of a lien that is prior to the lien of the mortgage of the corporation, association or agency; providing, further, that such officer, person or agent shall immediately notify the farm storage commissioner, stating under what authority he acts and that he has seized said grain, whereupon said commissioner shall immediately notify said corporation, association or agency thereof.

History: En. Sec. 6, Ch. 111, L. 1933.

CHAPTER 10

HARMFUL BARBERRY CONTROL

Section 3-1001. Harmful barberry—traffic in or permitting to exist unlawful.
3-1002. Duty of state board of horticulture to exterminate—proceedings.
3-1003. "Harmful barberry" defined.
3-1004. Provisions of act made applicable to mahonia.
3-1005. Violation of act a misdemeanor—penalty.

3-1001. (3603) **Harmful barberry—traffic in or permitting to exist unlawful.** It shall be unlawful for any person, firm, or corporation to sell, offer for sale, barter, give away, exchange, deliver, ship, transport, receive, or accept for shipment or transportation, plant, or permit to exist on his or its premises in the state of Montana, any plant of the harmful barberry.

History: En. Sec. 1, Ch. 40, L. 1919; re-en. Sec. 3603, R. C. M. 1921.

Collateral References
Agriculture⇐8.
3 C.J.S. Agriculture §§ 24-26, 28, 29.

3-1002. (3604) **Duty of state board of horticulture to exterminate—proceedings.** It shall be the duty of the state board of horticulture, or its duly authorized inspectors, to enforce the provisions of this act, and they are hereby empowered to cause to be eradicated any such harmful barberry plants found growing anywhere in the state. If the owner of the land on which such harmful plants are found growing shall fail or refuse to eradicate such plants, within ten days after receiving a written notice to that effect from a horticultural inspector, said inspector shall proceed to have such harmful barberry plants eradicated and destroyed wherever they may be found growing. As soon as the horticultural inspector has had such harmful barberry plants eradicated and destroyed, he shall make out a statement in duplicate of the actual cost and expense incurred by him in eradicating or destroying such harmful barberry plants. One of such statements shall be transmitted to the landowner affected by the work, and the other shall be filed in the office of the treasurer of the county wherein such land is situated. The treasurer shall place such amount so indicated in such statement, on the tax duplicate against the land of the landowner affected by such work, and such amount so entered shall be collected in the same manner and at the same time as taxes are collected, and when so collected shall be paid by the treasurer to the state board of horticulture, which shall remit to the state treasurer, to be added to the appropriation for the use of the state board of horticulture.

History: En. Sec. 2, Ch. 40, L. 1919; re-en. Sec. 3604, R. C. M. 1921.

3-1003. (3605) **"Harmful barberry" defined.** The term "harmful barberry," as used in this act, shall be construed to apply to any species of Berberis, and, as hereinafter provided for, to Mahonia, which are susceptible to infection by Puccinia graminis, commonly called black-stem rust of grain, but not including Japanese barberry (B. thunbergii), which does not propagate the rust.

History: En. Sec. 3, Ch. 40, L. 1919; re-en. Sec. 3605, R. C. M. 1921.

3-1004. (3606) **Provisions of act made applicable to mahonia.** The state board of horticulture is hereby empowered to apply the provisions of this act to species of mahonia, whenever in its judgment the necessity arises.

History: En. Sec. 4, Ch. 40, L. 1919; re-en. Sec. 3606, R. C. M. 1921.

3-1005. (3607) **Violation of act a misdemeanor—penalty.** Any person, firm or corporation which shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined any sum not less than ten dollars and not more than twenty-five dollars for each offense.

History: En. Sec. 5, Ch. 40, L. 1919; re-en. Sec. 3607, R. C. M. 1921.

CHAPTER 11

HORTICULTURE—CONTROL OF FRUIT PESTS AND DISEASES

Section 3-1101. Division of horticulture—duties.
3-1102. Horticultural districts.
3-1103. Destruction of fruit pests—use of crates.
3-1104. Inspectors of fruit pests—appointment and duties.
3-1105. Appointment of horticultural inspector.
3-1106. Employment of specialist on insect pests.

3-1101. (3608) **Division of horticulture—duties.** The department of agriculture, through the division of horticulture, shall enforce all of the laws of the state of Montana now in force or hereafter enacted, relating to the protection and regulation of the industry of horticulture in the state of Montana.

History: En. Sec. 37, Ch. 216, L. 1921; re-en. Sec. 3608, R. C. M. 1921.

Compiler's Notes

The compiler has, pursuant to section 3-101.1, substituted "department of agriculture" for "department of agriculture, labor and industry" in this section.

The division of horticulture has been changed to the "horticultural inspection and quarantine service." See sec. 3-109.1.

Collateral References

Agriculture⇨2.
3 C.J.S. Agriculture § 6.

3-1102. (3609) **Horticultural districts.** For the convenient administration of the laws of the state relative to the industry of horticulture, the commissioner of agriculture may divide the state into horticultural districts, grouping the several counties in such manner as he may deem expedient.

History: En. Sec. 38, Ch. 216, L. 1921; re-en. Sec. 3609, R. C. M. 1921.

Collateral References
Agriculture⇐9.
3 C.J.S. Agriculture §§ 30, 33-36.

3-1103. (3610) **Destruction of fruit pests—use of crates.** For the purpose of preventing the spread of contagious disease among fruit and fruit trees, and for the prevention, treatment, cure and extirpation of fruit pests and diseases of fruit and fruit trees, and for the disinfection of grafts, scions, and orchard debris, empty fruit boxes or packages, or other suspected material or transportable articles dangerous to orchards, fruit and fruit trees, the commissioner of agriculture may prescribe regulation for the inspection, disinfection or destruction thereof, which regulation shall be circulated in printed form by the commissioner among fruit growers and fruit dealers of the state, and shall be published at least ten days in two newspapers of general circulation in the state, and shall be posted in three conspicuous places in each county in the state, one of which shall be at the county courthouse thereof. For further prevention of the spread of diseases dangerous to fruit and fruit trees, it shall be unlawful for any person or persons, dealer or dealers, to allow, or cause to be used a second time, any crate, box, barrel, package or wrapping once having contained nursery stock, except that at the written request of a nurseryman, an inspector may permit boxes or packages having contained nursery stock to be thoroughly fumigated by him or in his presence, at the expense of the nurseryman, for which said inspector shall give a receipt and duly mark the box or package; otherwise, the destruction of the same must be made in its entirety, and the finding of such crate, box, barrel, package or wrapping in possession of any person or persons, dealer or dealers, other than the consignee, shall be considered prima facie evidence of a violation of this act.

The commissioner of agriculture or his authorized representative is hereby authorized to seize and destroy by burning, without breaking, such crate, box, barrel, package or wrapping wherever found, and to prosecute said violator or violators.

History: En. Sec. 39, Ch. 216, L. 1921; re-en. Sec. 3610, R. C. M. 1921; amd. Sec. 1, Ch. 29, L. 1963.

Collateral References

Right to and measure of compensation for trees destroyed to prevent spread of disease or infection. 67 ALR 208.

Liability for injury to animals poisoned as result of spraying or dusting of crop. 12 ALR 2d 436.

Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection. 70 ALR 2d 852.

3-1104. (3611) **Inspectors of fruit pests—appointment and duties.** The commissioner of agriculture shall appoint inspectors of fruit pests in such number as he may deem necessary for the proper administration of the horticulture laws. Said inspectors shall be selected with reference to their knowledge and practical experience in horticulture. It shall be the duty of such inspectors to visit the nurseries, orchards, stores, packing houses, warehouses and other places where horticultural products and fruits are kept within their respective district, and shall see that the regulations of the department of agriculture, labor and industry, and the laws of the state with reference to the disinfection of fruits, trees, plants, grafts,

orchard debris and empty fruit boxes and other material shall be fully complied with. Said inspectors shall have access, at all times, to all orchards or places where horticultural products or supplies are kept or handled, and shall have full power to enforce the rules and regulations of the commissioner of agriculture, and to order the destruction and disinfection of any or all trees, plants, fruits or horticultural products or supplies when found to be infected.

History: En. Sec. 40, Ch. 216, L. 1921; re-en. Sec. 3611, R. C. M. 1921.

Compiler's Note

The department of agriculture, labor and industry has been divided into two separate departments; the department of agriculture headed by the commissioner of agriculture and the department of labor and industry headed by the commissioner of labor and industry. The reference in this section would be to the department of agriculture and the commissioner of agriculture. See Const., art. XVIII, sec. 1 and sec. 3-101.1.

Collateral References

Agriculture⇐9; Inspection⇐4.

3 C.J.S. Agriculture §§ 30, 33-36; 44 C.J.S. Inspection §§ 10, 11.

3-1105. (3612) **Appointment of horticultural inspector.** The commissioner of agriculture shall have the power to appoint some competent and qualified person to enforce the laws of the state relative to the grading and marketing of fruits and traffic and nursery stock, the control and destruction of insect pests, fungus and bacterial diseases, to enforce the law relative to the licensing of persons engaged in the business of selling or importing fruits, trees, plants or nursery stock in this state, and to supervise and direct the horticultural inspection service and the dissemination of horticultural knowledge.

History: En. Sec. 41, Ch. 216, L. 1921; re-en. Sec. 3612, R. C. M. 1921.

3-1106. (3613) **Employment of specialist on insect pests.** The commissioner of agriculture, subject to the approval of the state board of examiners, in special instances, may employ a specialist for the purpose of investigating the source, control and destruction of insect pests, fungus and bacterial diseases of orchards, trees, shrubs, plants or nursery stock in this state; such employment shall be for a period not exceeding six months in any one year, and shall be on such terms as may be agreed upon by the commissioner of agriculture and the state board of examiners.

History: En. Sec. 42, Ch. 216, L. 1921; re-en. Sec. 3613, R. C. M. 1921.

CHAPTER 12

NURSERIES AND NURSERYMEN—LICENSE AND REGULATION

Section 3-1201. Sales of nursery stock—inspection—fee.
3-1202. Penalty for failure to obey rules.
3-1203. Duty to notify inspector of infection.
3-1204. Removal of infected trees—assessment of costs.
3-1205. Penalty for delivery of uninspected nursery stock.
3-1206. Notice to commissioner of shipment of nursery stock.
3-1207. Penalty for receiving uninspected nursery stock.
3-1208. Delivery of nursery stock without certificate.
3-1209. Right to hold produce for inspection.
3-1210. Inspection of Montana nursery stock—certificate.
3-1211. Penalty for violation of act.

3-1212. License required of nurserymen—application and payment of fees—seasonal nurserymen defined.
3-1213. Renewal of license.
3-1214. Grounds for refusal or revocation of license.
3-1215. Acts made unlawful.
3-1216. Duplicate copies of orders for nursery stock required.
3-1217. Duration of license.

3-1201. (3614) **Sales of nursery stock—inspection—fee.** It shall be the duty of every person or persons, corporation or corporations, who sell or deliver to any person or persons, corporation or corporations, any trees, plants, vines, scions, grafts, fruits or vegetables not previouly inspected under the provisions of this act, to notify the commissioner of agriculture, or the nearest horticultural inspector of such sale or delivery. It shall be the duty of the inspector receiving such notice to inspect the said trees, plants, grafts, scions, vines, fruits or vegetables, as soon thereafter as practicable, and if the same be found free from any and all diseases and pests, he shall so certify and attach a certificate of inspection to each lot or bill of trees, plants, scions, grafts, vines, fruits or vegetables, so inspected. But if any of the trees, grafts, scions, vines, plants, fruits or vegetables so inspected shall be found to be diseased or infested with any of the pests mentioned in section 3-1301 of this code, then the inspector shall order the disinfection or destruction of any of said trees, grafts, scions, vines, plants, fruits or vegetables, so diseased or infested, together with all boxes, wrapping or packing pertaining thereto; provided, that when any fruit or nursery stock, or vegetables is condemned by any inspector, said inspector shall notify the owner thereof, who may appeal to the commissioner of agriculture, whose decision shall be final; and charge and collect the sum of ten ($10.00) dollars for the inspection of each carload of said nursery stock and a proportionate sum for less than carload lots, as fixed by the commissioner; provided, that the commissioner of agriculture shall have power to designate certain places as quarantine stations where all nursery stock brought into the state shall be inspected and disinfected. The charge for disinfecting, fumigating or inspection of nursery stock, fruits and vegetables shall be fixed by the commissioner of agriculture.

Before fixing the charge for disinfecting, fumigating or inspecting nursery stock, fruits or vegetables, the commissioner of agriculture shall give notice of a hearing, which notice shall be published once in each of three newspapers of general circulation in the state, and shall state the time and place of said hearing. The charge so fixed shall not be effective until approved by the state board of examiners.

The inspector shall collect all such fees and shall not give certificate of inspection until the fees are paid.

History: En. Sec. 43, Ch. 216, L. 1921; re-en. Sec. 3614, R. C. M. 1921; amd. Sec. 1, Ch. 112, L. 1939; amd. Sec. 1, Ch. 89, L. 1945.

Collateral References

Agriculture⇨9; Inspection⇨5.
3 C.J.S. Agriculture §§ 30, 33-36; 44 C.J.S. Inspection §§ 5-8.

3-1202. (3615) **Penalty for failure to obey rules.** If any person or persons in charge or control of any nursery, orchard, storeroom, packing house, or other place where horticultural products or supplies are handled

or kept, shall fail or refuse to comply with the rules and regulations of the commissioner of agriculture, or shall fail or refuse to disinfect or destroy diseased or infected trees, plants, scions, vines, grafts, shrubs, or other horticultural supplies or products, when ordered so to do by the inspector of such district, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than twenty-five dollars nor more than three hundred dollars.

History: En. Sec. 44, Ch. 216, L. 1921; re-en. Sec. 3615, R. C. M. 1921.

3-1203. (3616) **Duty to notify inspector of infection.** It shall be the duty of every owner or manager of every orchard, nursery, storeroom, packing house, or other place where horticultural products or supplies are kept or handled, which shall become diseased or infested with any injurious insect or pest, immediately upon discovery of the existence of such disease or pest, to notify the inspector of said district of the existence of the same. It shall be the duty of such owner or manager, at his own proper expense, to comply with and carry out all the instructions of said inspectors for the eradication of any disease or pest. Any person who shall fail or refuse to notify said inspector, as herein provided, or who shall fail or refuse to comply with the instructions of said inspector for the eradication of any disease or pest, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than twenty-five dollars nor more than three hundred dollars.

History: En. Sec. 1926, Rev. C. 1907 by Sec. 1, Ch. 121, L. 1911; re-en. Sec. 3616, R. C. M. 1921.

3-1204. (3617) **Removal of infected trees—assessment of costs.** If any person, firm or corporation, or the legal representative of any person, firm or corporation, owning any orchard, tree, shrub, plant or vines which is known to be infected or infested with any injurious insect pest or disease and which thereby becomes a menace to the agricultural or fruit industry, or a menace to ornamental trees, shrubs, plants or vines of this state, or any city or county thereof, shall fail, refuse or neglect to comply with the instructions of the department of agriculture, labor and industry, or its authorized representative, for the eradication or control of such injurious insect pest or disease, or the destruction of said infested or infected orchard, tree, shrub, plant or vines within the time specified by the said department or its authorized representatives, if in the judgment of said department or its authorized representatives such treatment or destruction shall be deemed necessary, said department or its authorized representative is empowered to condemn, remove or destroy any such orchard, tree, shrub, plant or vines or treat such orchard, tree, shrub, plant or vine, with a proper remedy, and if such owner, or his legal representative shall fail, neglect or refuse to pay the cost of such removal, treatment, or destruction of such orchard, tree, shrub, plant or vines within thirty days after due notice has been given by mailing to the owner, or his legal representative, at his last known post-office address, then said cost and expense shall become a lien on the land of the owner and shall be added by the county treasurer to the taxes upon said property and collected as other taxes.

History: En. Sec. 45, Ch. 216, L. 1921; re-en. Sec. 3617, R. C. M. 1921; amd. Sec. 1, Ch. 86, L. 1939.

Compiler's Note

The department of agriculture, labor and industry has been divided into two separate departments; the department of agriculture headed by the commissioner of agriculture and the department of labor and industry headed by the commissioner of labor and industry. The reference in this section would be to the department of agriculture. See Const., art. XVIII, sec. 1 and sec. 3-101.1.

3-1205. (3618) **Penalty for delivery of uninspected nursery stock.** Every person who, for himself or as agent for any other person or persons, corporation or corporations, transportation company, or common carrier, shall receive, deliver or turn over to any person or persons, corporation or corporations any trees, vines, shrubs, nursery stock, scions, grafts and fruits without first having attached an inspector's certificate, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than twenty-five dollars nor more than three hundred dollars.

History: En. Sec. 46, Ch. 216, L. 1921; re-en. Sec. 3618, R. C. M. 1921.

3-1206. (3620) **Notice to commissioner of shipment of nursery stock.** It shall be the duty of every person, firm or corporation, licensed to do business under this act to notify the commissioner of agriculture of his intention to ship an invoice of fruit trees, plants, or nursery stock not previously inspected under the provisions of this act, from one point to another in this state, or from any point without this state into this state. The said notice shall contain the name and address both of the consignor and consignee, and the list of the goods to be shipped, the freight or express office at which the goods are to be delivered, and the name or title of the transportation company from whom the consignee is to receive the goods. Such notice shall be mailed at least five days before the day of shipment.

History: En. Sec. 48, Ch. 216, L. 1921; re-en. Sec. 3620, R. C. M. 1921.

3-1207. (3621) **Penalty for receiving uninspected nursery stock.** Any person or persons who shall receive and accept any nursery stock, fruit trees, plants, vines, scions, cuttings, grafts, etc., that have not been inspected by a duly appointed inspector of the commissioner of agriculture, and shall use or dispose of said nursery stock, fruit trees, vines, plants, scions, cuttings, grafts, etc., without first notifying the inspector and furnishing him an opportunity to examine, and, if necessary, fumigate said nursery stock, will be deemed guilty of a misdemeanor, and will be subject to fine as further provided in this act.

History: En. Sec. 49, Ch. 216, L. 1921; re-en. Sec. 3621, R. C. M. 1921.

Collateral References

Agriculture⇐9.

3 C.J.S. Agriculture §§ 30, 33-36.

3-1208. (3622) **Delivery of nursery stock without certificate.** Every person who, for himself or as agent for any other person or persons, corporation or corporations, transportation company, or common carrier, shall deliver or turn over to any person or persons, corporation or corporations, any trees, vines, shrubs, nursery stock, scions, and grafts, without first having attached the inspector's certificate [as provided in section 1924 of

this act], shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than twenty-five dollars nor more than three hundred dollars.

History: En. Sec. 1928, Rev. C. 1907 by Sec. 1, Ch. 121, L. 1911; re-en. Sec. 3622, R. C. M. 1921.

NOTE.—The bracketed section was repealed by Sec. 71, Ch. 216, Laws 1921.

References

Welch v. Dean, 49 M 263, 266, 144 P 548.

3-1209. (3623) **Right to hold produce for inspection.** No person or persons, corporation or corporations, shall be liable to any other person or persons, corporation or corporations, for any damage to any trees, vines, or shrubs, nursery stock, scions or grafts, by reason of the same being held to await the certificate of the inspector [as provided in section 1924 of this act].

History: En. Sec. 1929, Rev. C. 1907 by Sec. 1, Ch. 121, L. 1911; re-en. Sec. 3623, R. C. M. 1921.

NOTE.—The bracketed section was repealed by Sec. 71, Ch. 216, Laws 1921.

3-1210. (3624) **Inspection of Montana nursery stock—certificate.** All nursery stock, trees, plants, vines, and cuttings grown or growing within the state of Montana, used for filling orders, shall after said stock shall [sic] in the manner and at the times designated by the commissioner of agriculture, and before the same shall have been packed for delivery, be inspected by a duly appointed inspector, and shall be disinfected by fumigating or other method, when in his judgment such is necessary. After such inspection if it be found that said nursery stock, trees, plants, vines, and cuttings are clean and free from insects and fungi pests, he shall issue his certificate to said nurseryman, and said certificate shall entitle him to use said stock, so inspected and disinfected, for filling orders for the next current delivery; and said inspector's certificate shall be furnished to those entitled to them at a price not to exceed forty cents per hundred.

Nurseries shall give to the commissioner of agriculture five days' notice of the time when said stock shall be ready for inspection under the provisions of this act.

History: En. Sec. 50, Ch. 216, L. 1921; re-en. Sec. 3624, R. C. M. 1921.

Collateral References

Agriculture⇐9; Licenses⇐3.
3 C.J.S. Agriculture §§ 30, 33-36.

3-1211. (3625) **Penalty for violation of act.** Any person or persons, corporation or corporations, transportation companies, or common carriers, violating any of the provisions of this act, shall be deemed guilty of a misdemeanor, and fined in the sum of not less than twenty-five dollars nor more than three hundred dollars.

History: En. Sec. 51, Ch. 216, L. 1911; re-en. Sec. 3625, R. C. M. 1921.

3-1212. License required of nurserymen—application and payment of fees—seasonal nurserymen defined. It shall be unlawful for any person, firm, or corporation to engage in, conduct, or carry on the business of selling, dealing in, or importing into this state for sale or distribution, any nursery stock, or to act as agent, salesman, or solicitor for any nursery-

man or dealer in nursery stock, or to solicit orders for the purchase of nursery stock, without first having obtained from the commissioner of agriculture and having in force a license to do so, and it shall be unlawful for any person to falsely represent that he is an agent, salesman, solicitor, or representative of any nurseryman or dealer in nursery stock. No license shall be issued until the applicant therefor shall have attested to the application for a license furnished upon request by the commissioner of agriculture, paid the fees, as in this act required, and all agents, salesmen, and solicitors for licensed nurseries shall be granted salesmen's certificates free of charge, upon request of the licensee. No license shall be issued to a seasonal nurseryman unless the applicant shall have made application for such license at least thirty (30) days in advance of doing business within the state of Montana each year. A seasonal nurseryman is any person, firm, corporation, or other, engaged in the business of selling, dealing in, or importing into the state of Montana, for sale or distribution, any nursery stock which is for sale only during certain growing seasons and whose place of business is open only during certain growing seasons and not continuously throughout the year.

All licenses shall be in the name of the person, firm, or corporation licensed, and shall show the purpose for which issued, the name and location of the nursery or place of business of the nurserymen or dealer licensed or represented by the agent, salesman, or solicitor. All applications for a license must be in the name of the person, firm, or corporation to be licensed, also it must show the nursery acreage represented by the applicant, and such other information as is desired by the commissioner of agriculture. All licenses must bear the date of issue and shall expire the first day of July next following the date of issue. The license fee shall be fifteen dollars ($15.00) per annum for a general nursery, dealing in all kinds of nursery products; ten dollars ($10.00) per annum for a nursery dealing in small fruits, ornamental shrubs, bulbs and perennials; five dollars ($5.00) for a nursery dealing in bulbs and perennials only; and fifteen dollars ($15.00) for seasonal nurserymen.

History: En. Sec. 1, Ch. 220, L. 1943; amd. Sec. 1, Ch. 121, L. 1963.

Cross-Reference

Carrying on business without license, penalty, sec. 94-1511.

3-1213. Renewal of license. Every licensed nurseryman or dealer in nursery stock who shall have complied with the provisions of this act, shall be entitled, upon the expiration of his license or any renewal thereof, by the payment of the proper fee on or before the date of the expiration of his license or any renewal thereof, to have his license renewed for the ensuing year ending July first.

History: En. Sec. 2, Ch. 220, L. 1943.

3-1214. Grounds for refusal or revocation of license. A license may be refused at any time, or revoked when the person, firm, or corporation applying therefor has been adjudged bankrupt, insolvent, or guilty of fraud or deceit by any court of competent jurisdiction, or upon complaint in writing, verified under oath by the complainant, being made to the commissioner of agriculture, that the holder of any license in this act provided

for has violated or failed to comply with the provisions of this act or the laws of the state of Montana relating to horticulture, the commissioner of agriculture, if in his judgment the complaint is justified, may revoke the license of the nurseryman complained of.

History: En. Sec. 3, Ch. 220, L. 1933.

3-1215. Acts made unlawful. It shall be unlawful for any person to falsely represent or to misrepresent the name, age, variety, or class of any nursery stock sold or offered for sale, or to falsely represent or state that any nursery stock offered for sale, sold, or delivered was grown in or came from a certain nursery or locality, when in fact such nursery stock was grown in or came from another location, or nursery, or to deceive or defraud any person in the sale of any nursery stock by substituting inferior or different varieties or ages from those ordered, or to willfully or intentionally bring into this state, or to offer for sale or distribution within this state, or to ship, sell or deliver upon any sale any nursery stock that is infected or infested with any disease or insect dangerous to the horticultural interests of the state, and in case of such misrepresentation, false representation, deceit, fraud, or substitution, shall be subject to punishment as provided by the statute for misdemeanor, and shall be liable to the person, firm, or corporation damaged or injured thereby, the amount of all damages sustained to be recovered in a civil action in any court of competent jurisdiction.

History: En. Sec. 4, Ch. 220, L. 1943.

3-1216. Duplicate copies of orders for nursery stock required. It shall be the duty of all nurserymen or dealers in nursery stock, and all salesmen, solicitors, and agents therefore, to give to every person ordering any nursery stock a duplicate copy of such order which shall show:

1. The name and location of the nursery where such stock is grown.

2. The name of the nurseryman from whom ordered, and the name of the solicitor, salesman, or agent taking such order.

3. The date of the order and when delivery is to be made.

4. The number, name, age, and price of such variety of tree or plant ordered.

In the event of the shipment into this state from any point without this state of any nursery stock, by a person, firm, or corporation not licensed to do business in this state, as in this act provided, it shall be the duty of the purchaser or person receiving such nursery stock to have the same inspected by a horticultural inspector, in the same manner as is required upon the delivery of nursery stock sold and delivered by a licensed nurseryman or dealer in nursery stock within this state, and to pay an inspector's fee of ten per cent (10%) of the invoice price of such shipment; provided, that the minimum fee for such inspection shall be fifty cents (50¢) and the actual and necessary traveling expenses of the inspector making the inspection; and provided, further that no inspection fees shall be collected in excess of the regular inspection fees, where such stock is shipped to a person, firm, or corporation, holding a Montana license, as provided in this act.

History: En. Sec. 5, Ch. 220, L. 1943.

3-1217. Duration of license. Licenses granted under this act shall be for one (1) year, unless revoked for any violation of this act.

History: En. Sec. 6, Ch. 220, L. 1943.

CHAPTER 13

ORCHARDS—VEGETABLE AND PLANT DISEASE CONTROL—QUARANTINE

Section 3-1301. Importation and sale of infected fruits and vegetables prohibited.
3-1302. Quarantine of orchards—penalty for violation.
3-1303. Expenses of eradicating orchard diseases—collection as tax.
3-1304. Expenses of eradicating orchard diseases—collection as tax—disposal of money.
3-1305. Inspection of apples packed for sale—procedure.
3-1306. Quarantine against insect pests and plant diseases in other states.
3-1307. Governor may quarantine against insect pests.
3-1308. Penalties for receiving products from infected districts.

3-1301. (3626) **Importation and sale of infected fruits and vegetables prohibited.** It shall be unlawful for any person, firm or corporation to import into this state, sell, barter or otherwise dispose of, or offer for sale, or have in his possession for the purpose of sale or barter, any fruit or vegetable which is or has been infested with San Jose scale, or the larvae of the coddling moth, or other insect pest or disease dangerous to agriculture; and the fact that any fruit or vegetable bears the mark of any such insect, or is worm eaten by the larvae of the coddling moth, or shows the effect of disease, shall be deemed conclusive evidence that the fruit or vegetable is infected within the meaning of this section, and may be condemned and confiscated by any legal horticultural inspector; provided that nothing in this section shall be construed to prevent the growers of such infected fruit or vegetable from manufacturing the same into a by-product, or selling and shipping the same to a by-product factory, after first having obtained a written permit so to do from a horticultural inspector.

History: En. Sec. 1935, Rev. C. 1907 by Sec. 1, Ch. 121, L. 1911; amd. Sec. 1, Ch. 99, L. 1915; re-en. Sec. 3626, R. C. M. 1921; amd. Sec. 1, Ch. 90, L. 1939.

Collateral References
Agriculture⇐9½.
3 C.J.S. Agriculture § 43.

3-1302. (3627) **Quarantine of orchards—penalty for violation.** The Montana commissioner of agriculture is hereby authorized and empowered to establish a quarantine over any orchard or place where fruits are grown or kept, that is infested with any injurious disease or insect pest; and said commissioner may establish such rules and regulations governing such quarantine, and regulating or restricting the use of such fruits upon the premises, or the shipment or disposition of the same, as he may deem necessary to prevent the spreading of such disease or diseases or insect pests.

Any person who shall violate the provisions of this section, or the rules and regulations established by said commissioner of agriculture, or who shall ship or dispose of any diseased or infested fruit or fruit products in violation of the order of said commissioner, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in the sum of not less than twenty-five dollars nor more than three hundred dollars.

History: En. Sec. 52, Ch. 216, L. 1921; re-en. Sec. 3627, R. C. M. 1921.

3-1303. (3628) **Expenses of eradicating orchard diseases—collection as tax.** Whenever, under the direction or regulations of the Montana commissioner of agriculture, any money is expended by said board for the purpose of eradicating any disease or insect pest from any orchard or other place where fruits are grown or kept, said commissioner, through its representative, shall notify the owner of such orchard or premises in writing of the amount so expended plus an additional charge of twenty-five per cent of the amount so expended. Said notice shall be mailed to the last known address of such owner, and if such owner shall fail to pay the amount so expended by said commissioner plus an additional charge of twenty-five per cent of the amount so expended, within thirty days of the time such notice is sent, then and in that event the commissioner shall file a statement, vertified under oath by himself or his representative, with the county treasurer in the county wherein said money shall have been expended. Said statement shall set forth the amount so expended plus an additional charge of twenty-five per cent of the amount so expended, together with the correct description of the property on which such money was expended as it appears on the assessment roll of the county. The county treasurer shall add the total amount as set forth in said statement to the taxes upon said property, and shall collect the same as provided by the law for the collection of taxes for state and county purposes.

History: En. Sec. 53, Ch. 216, L. 1921; re-en. Sec. 3628, R. C. M. 1921.

Collateral References

Agriculture⇐9½.

3 C.J.S. Agriculture § 39.

3-1304. (3629) **Expenses of eradicating orchard diseases—collection as tax—disposal of money.** The county treasurer in any county where any money is collected as provided in the preceding section shall, on or before the first day of February of each year, remit the amount to the state treasurer, who shall deposit same to the credit of the general fund of the state.

History: En. Sec. 54, Ch. 216, L. 1921; re-en. Sec. 3629, R. C. M. 1921.

3-1305. (3630) **Inspection of apples packed for sale—procedure.** It shall be the duty of the commissioner of agriculture, or his authorized representative or inspector, to inspect all apples packed for sale or shipment pursuant to the provisions of sections 4265 to 4272 of this code, and said commissioner is hereby authorized to certify to the grade and pack thereof, and to charge the owner, packer, or shipper of any such apples a fee to be fixed by said commissioner of agriculture for such services, and said commissioner may make such rules and regulations regarding such inspection, not in conflict with the laws of the state, as he may deem proper.

History: En. Sec. 55, Ch. 216, L. 1921; re-en. Sec. 3630, R. C. M. 1921.

NOTE.—Sections 4265 to 4272, R. C. M. 1921, referred to in this section, were repealed by Ch. 138, Laws 1931. See sections 90-201 to 90-206 which superseded the above sections.

3-1306. (3631) **Quarantine against insect pests and plant diseases in other states.** Whenever the governor of the state has good reason to believe that any pest, gypsy moth, brown-tail moth, Mediterranean fruit-fly, potato wart, potato canker, black scab, potato ellworm, pea-weevil,

alfalfa weevil, alfalfa blight, flax canker, or flax-wilt, or other fruit or plant disease or insect pest, dangerous or inimical to the horticultural or the agricultural industry, exists in certain localities in another state, territory, or country, or that conditions exist that render domestic horticultural stock or agricultural crops or plants likely to become diseased, he must by proclamation designate such localities, and prohibit the importation therefrom of any tubers, plants, nursery stock, fruit, or seeds or agricultural crops, plants, or seeds likely to introduce or spread infection, contagion, or insect pests into the state, except under such restrictions as he, after consulting with the state board of horticulture, the commissioner of agriculture, or the state entomologist may deem proper.

History: En. Sec. 1, Ch. 61, L. 1913; re-en. Sec. 3631, R. C. M. 1921.

Collateral References

Agriculture⇨9½.
3 C.J.S. Agriculture § 37.

3-1307. (3632) **Governor may quarantine against insect pests.** Whenever the governor of this state has good reason to believe that any pest, gypsy moth, brown-tail moth, potato wart, potato canker, black scab, potato ellworm, pea-weevil, alfalfa weevil, alfalfa blight, flax canker, flax wilt, or other plant disease or insect pest, dangerous or inimical to the agricultural or horticultural industry, exists within any county or locality within the state, it shall be specifically understood that he has authority to quarantine any county, district, locality or ranch, and it shall be his duty to prescribe and enforce such rules and regulations as may be necessary to prevent the movement of any designated articles or materials whatever across the boundaries of such quarantined counties, districts, localities, or ranches, and for the control and eradication of such pests or diseases.

History: En. Sec. 2, Ch. 61, L. 1913; amd. Sec. 1, Ch. 89, L. 1921; re-en. Sec. 3632, R. C. M. 1921.

3-1308. (3633) **Penalties for receiving products from infected districts.** Any person, firm, or corporation who, after publication of such proclamation, knowingly receives in charge any tubers, plants, nursery stock, fruit, seeds, or agricultural crops, plants, or seeds from any of the prohibited districts, and transports, conveys, sells, or uses the same within the limits of this state, is guilty of a misdemeanor, and punishable by a fine of not less than ten dollars or more than five hundred dollars, and is further liable for any and all damages and loss that may be sustained by any person by reason of the importation or transportation of such prohibited and diseased tubers, plants, nursery stock, fruits, seeds, or agricultural crops, plants, or seeds.

History: En. Sec. 3, Ch. 61, L. 1913; re-en. Sec. 3633, R. C. M. 1921.

CHAPTER 14

STANDARD GRADES AND BRANDS FOR MONTANA FARM PRODUCTS

Section 3-1401. Standard grades for Montana farm products.
3-1402. Definitions.
3-1403. Commissioner to establish standard grades—notice required.

3-1404. Grading and branding of products required—labeling of culls.
3-1405. Unlawful to sell or transport products unless labeled, tagged or branded—use of tags.
3-1406. Inspection of condition of products in storage or transit.
3-1407. Enforcement of act.
3-1408. Rules and regulations for enforcement.
3-1409. Intent and purpose of act.
3-1410. Violation of provisions—penalty.
3-1411. Grade of agricultural products to be stated in advertisements.
3-1412. Penalty for violations.

3-1401. (3633.1) **Standard grades for Montana farm products.** The standard grades for Montana farm products shall be limited to the United States grades covering the same products and shall conform in all respects and be identical with the latest standards established by the United States secretary of agriculture for the various commodities, and thus conforming shall be accepted as the legal standards for the state of Montana.

History: En. Sec. 1, Ch. 165, L. 1933.

Collateral References

Food©=5.
36A C.J.S. Food § 15.

3-1402. (3633.2) **Definitions.** The following terms, whenever used in this act, or in rules and regulations later promulgated by the commissioner of agriculture, shall have the meaning as indicated:

(a) "Commissioner" shall mean the commissioner of agriculture of the Montana department of agriculture.

(b) The term "farm products" shall mean all products of the farm intended for table use and also to include beans; but shall not include livestock and its by-products; poultry and its products; apiary products; dairy products; grain and apples.

(c) "Container" or "package" shall mean cloth or fibre sacks, barrel, box, crate, carton, hamper or baskets, such as are customarily used for the shipment of farm products.

(d) "Person" as used herein shall mean any grower, dealer, shipper, society, association, organization, corporation or their agents or representatives.

History: En. Sec. 2, Ch. 165, L. 1933.

3-1403. (3633.3) **Commissioner to establish standard grades—notice required.** (a) The commissioner of agriculture shall at once establish in the manner provided by this act, United States standard grades on strawberries, potatoes, onion, head lettuce, cabbages, beans and shall thereafter, as soon as any agricultural product shall have reached a volume rendering it of market importance, establish United States grades on same.

(b) The commissioner of agriculture shall establish grades by proclamation, giving thirty (30) days' notice of such action, and shall publish such proclamation two (2) times in at least three (3) papers of general circulation within the state.

History: En. Sec. 3, Ch. 165, L. 1933.

3-1404. (3633.4) **Grading and branding of products required—labeling of culls.** (a) It shall be unlawful for any person, firm, association, organization, corporation or their agents or representatives or assistant

of any person, firm, association, organization or corporation to pack for sale, expose for sale, or sell, transport, deliver or consign, or have in possession for sale, transport, delivery or consignment in interstate or intrastate commerce, farm products prepared for market which are not graded and branded to meet the requirement of the grade declared. The grade declared shall conform to the provisions of this act.

(b) Provided that farm products not conforming to established grades may be sold if labeled, tagged or branded in the same manner as graded products, except that in place of specifying the grade, the word "culls" or "unclassified" shall be used.

(c) Provided that all products branded "unclassified" must contain at least fifty per cent (50%) of products which would grade United States No. 2, or better.

(d) Provided further that farm products for seed purposes may be sold when graded under rules approved by the commissioner of agriculture and plainly labeled, tagged or branded "For Seed Purposes."

(e) Provided further that U. S. commercial grade shall be a standard grade in the state of Montana.

History: En. Sec. 4, Ch. 165, L. 1933; amd. Sec. 1, Ch. 71, L. 1937; amd. Sec. 1, Ch. 30, L. 1963.

Collateral References

Food⇐14.

36A C.J.S. Food §§ 12 (8), 22, 25.

3-1405. (3633.5) **Unlawful to sell or transport products unless labeled, tagged or branded—use of tags.** (a) It shall be unlawful for any person, firm, association, organization or corporation, or agent, representative or assistant to any person, firm, association, organization or corporation, to expose for sale, or sell, transport, deliver or consign, or have in possession farm products prepared for market unless each container has been legibly and conspicuously tagged, branded, labeled or stenciled before being moved from the premises of the person or persons responsible for the grading and packing, the name of the grade, together with the true net contents expressed in weight.

(b) When tags are used, United States No. 1 grade shall be declared on a white tag, and United States No. 2 grade shall be declared on a red tag. Bulk shipments shall be accompanied by two (2) cards not less than four by six inches (4″x6″) in size, placed on the inside of the car near each door. Likewise cards in size herein described shall be prominently placed on all bulk shipments made by truck or other conveyance. Upon each card shall appear the name and address of the consignor, the name of the grade, the name of the loading station, the date of loading and the name and address of the consignee, if known. It shall be conclusive evidence that the farm products are deemed for sale when the containers are packed for delivery or transit, or when same are exposed for sale, or when same are in process of delivery or transit, or located at a depot, station, boat dock, or any place where farm products, or other products are held for storage, or for immediate or future sale or transit.

History: En. Sec. 5, Ch. 165, L. 1933.

3-1406. (3633.6) **Inspection of condition of products in storage or transit.** Farm products held in storage or in transit which at the time of

inspection show deterioration or decay, but otherwise up to the grade, shall be inspected as to condition and not as to grade.

History: En. Sec. 6, Ch. 165, L. 1933.

Collateral References

Inspection⇐3.
44 C.J.S. Inspection § 4.

3-1407. (3633.7) **Enforcement of act.** The commissioner of agriculture is hereby charged with the enforcement of this act and is given power unto himself and to his duly appointed representatives to enter into and upon the premises where farm products are graded or packed or stored, to inspect the same as to grade, pack and condition.

History: En. Sec. 7, Ch. 165, L. 1933.

3-1408. (3633.8) **Rules and regulations for enforcement.** The commissioner of agriculture may promulgate rules and regulations deemed necessary to the proper enforcement of the provisions of this act.

History: En. Sec. 8, Ch. 165, L. 1933.

3-1409. (3633.9) **Intent and purpose of act.** The intent and purpose of this act is to regulate the sale of farm products for table use intended for interstate or intrastate commerce when such is made by the grower, dealer or distributor, or any other person either by wholesale or retail or in any other manner; provided, however, that the provisions of this act shall not apply to the grower in the sale of the farm products grown by himself or to small retail packages.

History: En. Sec. 9, Ch. 165, L. 1933.

3-1410. (3633.10) **Violation of provisions—penalty.** Whoever violates this act by not grading farm products as herein required, or by not tagging or branding containers as herein required, or by removing or altering any tag or brands placed upon or attached to any containers as in this act required, unless ordered to do so by the commissioner of agriculture, or his duly appointed representative or reprosentatives, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars ($10.00), nor more than one hundred dollars ($100.00), or by imprisonment in the county jail not less than thirty (30) days nor more than three (3) months, or by both such fine and imprisonment in accordance with the discretion of the court.

History: En. Sec. 10, Ch. 165, L. 1933.

Collateral References

Food⇐12.
36A C.J.S. Food §§ 21, 22.

3-1411. (3633.11) **Grade of agricultural products to be stated in advertisements.** That all advertised prices on agricultural products, on which grades have been established by law, in this state, whether in newspapers, circulars, bills, placards, signs or in any other manner shall in addition to the price quoted show the true grade of the product as provided by law; provided, that price tags exhibited in a place of business upon exposed products shall not be considered advertising under the provisions of this act.

History: En. Sec. 1, Ch. 46, L. 1935.

3-1412. (3633.12) **Penalty for violations.** Any person, firm or corporation failing to comply with section 3-1411 shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars ($10.00) or more than twenty-five dollars ($25.00).

History: En. Sec. 2, Ch. 46, L. 1935.

CHAPTER 15

MISCELLANEOUS POWERS AND DUTIES OF DEPARTMENT OF AGRICULTURE

Section 3-1501. Repealed.
3-1502. Maintenance of employment offices by city council.
3-1503. Examination of witnesses—inspection of factories, etc.
3-1504. Statistics—preparation and publication.
3-1505. Duty of public officers to furnish statistics.
3-1506. Existing departments abolished.
3-1507. Transfer of special funds to general fund.
3-1508. Successor to existing departments.
3-1509. Penalty for failure to obey orders of department.
3-1510. Intrastate transactions with paints, etc.—label—contents of label.
3-1511. Penalty for violations.
3-1512. Possession as prima facie evidence.
3-1513. Enforcement of act.
3-1514. Designation of laboratory for analysis—report of analysis.
3-1515. County attorney—duties regarding act.

3-1501 (3635) Repealed—Chapter 177, Laws of 1951.

Repeal

This section (Sec. 56, Ch. 216, L. 1921), charging the department of agriculture, labor and industry through the division of labor with the duty of enforcing certain labor laws, was repealed by Sec. 13, Ch. 177, Laws 1951. Labor laws are now enforced by the department of labor and industry, see sec. 41-1605.

3-1502. (3636) **Maintenance of employment offices by city council.** It is the duty of the city council of any incorporated city of the first or second class within this state, and it shall be lawful for the city council of any other incorporated city, to provide for the establishment of a free public employment office to be conducted on the most approved plans, and to provide for the expenses thereof out of the revenues of the city in which the same is established. The annual report of the department of labor and industry shall contain a detailed account of all such free employment offices within the state showing the number of applicants for employment, the number securing employment, and the expenses of maintaining such office.

History: En. Sec. 57, Ch. 216, L. 1921; re-en. Sec. 3636, R. C. M. 1921.

Compiler's Note

The compiler has, pursuant to section 3-101.1, substituted "department of labor and industry" for "department of agriculture, labor and industry" in this section.

Collateral References

Labor Relations⇨18.
56 C.J.S. Master and Servant § 26.

3-1503. (3637) **Examination of witnesses—inspection of factories, etc.** In discharging the duties imposed upon the division of labor and publicity, the commissioner of labor and industry shall have power to administer oaths, to examine witnesses under oath, to take depositions or cause same to be taken, to deputize any male citizen over the age of twenty-one years to serve subpoenas upon witnesses, and to issue subpoenas for the attendance

of witnesses before him in the same manner as for attendance before district courts. The commissioner of labor and industry shall likewise have the authority to inspect any mine, factory, workshop, smelter, mill, warehouse, elevator, foundry, machine shop, or other industrial establishment, and any person who shall refuse to the commissioner admission to any of the industrial establishments herein enumerated when admission is requested for the purpose of inspection, or who shall, when requested by the commissioner, willfully neglect or refuse to furnish to him any statistics or other information which may be in the possession or under the control of such person, or who shall refuse to obey any subpoena issued by the commissioner, shall be deemed guilty of a misdemeanor and be punished accordingly. Nothing herein contained shall in any manner confer upon the commissioner of labor and industry the authority to interfere in any manner with the conduct of the matters under the control of the industrial accident board, nor shall said commissioner be charged with the duty of enforcing any of the laws of the state of Montana pertaining to the affairs of said industrial accident board, nor with the enforcement of the safety provisions of the Workmen's Compensation Act.

History: En. Sec. 58, Ch. 216, L. 1921; re-en. Sec. 3637, R. C. M. 1921.

Compiler's Note

The compiler has, pursuant to section 3-101.1, substituted "commissioner of labor and industry" for "commissioner of agriculture" in this section.

Collateral References

Master and Servant⇐10.
56 C.J.S. Master and Servant § 14.

3-1504. (3638) **Statistics—preparation and publication.** The department of labor and industry, through the division of labor and publicity, shall prepare statistics and data, and shall publish a report relating to the agricultural, commercial, mining, manufacturing and other resources of the state, and such report shall be published and distributed in such form and quantity as in the judgment of said department may be deemed expedient and practicable. All reports sent out by said department shall bear a certificate thereon to the effect that they are issued by the authority of the state of Montana. The department shall also open correspondence with bureaus of emigration, boards of trade, and other organizations who are willing to assist in disseminating information in regard to the climate, industries, and resources of the state of Montana to the end that such information may become as generally available as possible.

History: En. Sec. 59, Ch. 216, L. 1921; re-en. Sec. 3638, R. C. M. 1921.

Compiler's Note

The compiler has, pursuant to section 3-101.1, substituted "department of labor and industry" for "department of agriculture, labor, and industry" in this section.

Collateral References

States⇐73.
81 C.J.S. States § 66.

3-1505. (3639) **Duty of public officers to furnish statistics.** It is hereby made the duty of all state and county officers to furnish to the division of labor and publicity any data, statistics, and information under their control when requested by said department, relating to the population, industries, climatic conditions, and assessed valuation of the state or any subdivision thereof.

History: En. Sec. 60, Ch. 216, L. 1921; re-en. Sec. 3639, R. C. M. 1921.

Collateral References
Counties⇨88; States⇨72.
20 C.J.S. Counties § 139; 81 C.J.S. States § 59.

3-1506. (3646) **Existing departments abolished.** The following offices, commissions, and departments of the state government heretofore constituted by law are hereby abolished, to wit:

The state board of horticulture.

The state horticulturist.

The board of directors of the state fair.

The board of dairy commission examiners.

The department of labor and industry.

The department of agriculture and publicity.

The state dairy commissioner.

The grain grading inspection and warehousing commission of the state of Montana.

The state board of poultry husbandry.

History: En. Sec. 67, Ch. 216, L. 1921; re-en. Sec. 3646, R. C. M. 1921.

Collateral References
States⇨44.
81 C.J.S. States §§ 50-52, 54-56.

3-1507. (3647) **Transfer of special funds to general fund.** The state treasurer is hereby authorized and directed, upon the taking effect of this act, to transfer to the general fund of the state of Montana any money in his hands belonging to any and all special funds heretofore created by law for the deposit of moneys received by the boards and departments mentioned in the preceding section.

History: En. Sec. 68, Ch. 216, L. 1921; re-en. Sec. 3647, R. C. M. 1921.

Collateral References
States⇨127.
81 C.J.S. States § 158.

3-1508. (3648) **Successor to existing departments.** The department of agriculture, labor, and industry is hereby designated as the legal successor of all the offices, boards, commissions, and departments mentioned in section 3-1506 of this code; all books, papers, and records of said offices, boards, commissions, and departments shall be turned over to the department of agriculture, labor, and industry, and said department is hereby authorized to carry out any contracts, complete any business, or prosecute or defend any suits heretofore entered into or instituted by any of the offices, boards, commissions, or departments mentioned in said section.

History: En. Sec. 69, Ch. 216, L. 1921; re-en. Sec. 3648, R. C. M. 1921.

Compiler's Note

The department of agriculture, labor and industry has been divided into two separate departments; the department of agriculture headed by the commissioner of agriculture and the department of labor and industry headed by the commissioner of labor and industry. See Const., art. XVIII, sec. 1 and sec. 3-101.1.

Collateral References
States⇨45.
81 C.J.S. States §§ 50-52, 57, 66.

3-1509. (3649) **Penalty for failure to obey orders of department.** Any person, firm, company, or corporation who shall violate any of the provisions of this act, or who shall fail to comply with any order of the department of agriculture, labor, and industry, or of the commissioner of

agriculture, or any of his lawfully constituted agents; provided, that said order be made in pursuance of the authority granted by this act, shall be deemed guilty of a misdemeanor and punishable by a fine of not to exceed five hundred dollars, or by imprisonment in the county jail for not to exceed six months, or by both such fine and imprisonment.

History: En. Sec. 70, Ch. 216, L. 1921; re-en. Sec. 3649, R. C. M. 1921.

Compiler's Note

The department of agriculture, labor and industry has been divided into two separate departments; the department of agriculture headed by the commissioner of agriculture and the department of labor and industry headed by the commissioner of labor and industry. See Const., art. XVIII, sec. 1 and 3-101.1.

3-1510. Intrastate transactions with paints, etc.—label—contents of label. Every person, firm, or corporation, who manufactures for sale, sells, offers for sale, or ships in intrastate transactions within the state, any paint, mixed paint, paste paint, or compound intended for use as paint, or any varnish, decorative protective coatings or additives for wood, metal, concrete, or roof coatings, but excluding artists' colors, waxes and polishes, shall label the same in a clear and distinct manner. Such label shall recite a full analysis of the content with a specification of pigment and vehicle. An analysis by percentage of the pigment content and the analysis by percentage of the vehicle content. The label shall further recite the name and address of the manufacturer or distributor of the product. The analysis and composition shall be subject to inspection by the chief chemist of a laboratory designated by the department of agriculture of the state of Montana.

History: En. Sec. 1, Ch. 69, L. 1959.

3-1511. Penalty for violations. Any person, firm, or corporation who fails to comply with all of the provisions of this act shall be subject to prosecution and upon conviction, to a fine of not less than twenty-five ($25.00) dollars and not more than one hundred ($100.00) dollars and all costs, including cost of analysis to the amount of twenty-five ($25.00) dollars or by imprisonment in a county jail not to exceed sixty (60) days.

History: En. Sec. 2, Ch. 69, L. 1959.

3-1512. Possession as prima facie evidence. The possession, either constructive or actual by any person, firm, or corporation dealing in said articles or substances hereinabove described and not properly labeled as provided by section 3-1510, shall be considered prima facie evidence that the same is kept for sale in violation of the provisions of this act and punishable under it.

History: En. Sec. 3, Ch. 69, L. 1959.

3-1513. Enforcement of act. The department of agriculture of the state of Montana shall be responsible for the enforcement of this act and shall appoint any assistants or agents deemed necessary for the proper enforcement of all the provisions of this act. These appointed agents or assistants shall be duly authorized for the purpose, and shall have access to all places of business, factories, stores and buildings used for the manufacture or sale of paints or other products described in section 3-1510. They shall have the power and authority to purchase and open any package, can,

jar, tub or other receptacle containing any of the articles recited in section 3-1510.

History: En. Sec. 4, Ch. 69, L. 1959.

3-1514. Designation of laboratory for analysis—report of analysis. The department of agriculture of the state of Montana shall designate the laboratory where analysis of the products recited in section 3-1510 shall be made. When analysis of the products mentioned in section 3-1510 are found to be in violation of this act, the chief chemist of the laboratory appointed and designated by the department of agriculture shall report the facts of his tests to the department of agriculture. Every certificate duly signed and acknowledged by the chief chemist of the laboratory relating to the analysis of any of the products mentioned in section 3-1510 shall be presumptive evidence of the facts therein stated.

History: En. Sec. 5, Ch. 69, L. 1959.

3-1515. County attorney—duties regarding act. It shall be the duty of the county attorney of the county of the state of Montana wherein the violation of this act occurred, to prosecute every person, firm, or corporation violating any of the provisions of this act when the evidence thereof has been presented by the chief chemist of the laboratory making the analysis as provided for in this act.

History: En. Sec. 6, Ch. 69, L. 1959.

CHAPTER 16

FARM PRODUCE DEALER—BOND AND LICENSE

Section 3-1601. Bond and license for farm produce dealers.
3-1602. Acts constituting misdemeanor.
3-1603. Report of licensees—inspection—authority of commissioner of agriculture.

3-1601. (3649.1) **Bond and license for farm produce dealers.** Each person, firm, corporation or association of persons, except for a regularly established wholesale or retail dealer or merchant who is rated in the commercial agencies, engaged in the business of buying in carlots for resale, hay, potatoes, apples, vegetables or other farm produce, not including grain, livestock or poultry, within the state of Montana, shall on or before the first day of July of each year, give a bond with good and sufficient sureties, to be approved by the commissioner of agriculture, to the state of Montana, in such sum as the commissioner may require, conditioned upon the faithful performance of his duties as such dealer, and upon the payment when due of the purchase price of farm products purchased by him, and for the prompt reporting of sales to all persons consigning farm produce to the licensee for sales on commission, and the prompt payment to the persons entitled thereto of the proceeds of such sales less lawful charges, disbursements and commissions. Each person, firm, corporation, or association of persons, except for a regularly established wholesale or retail dealer or merchant who is rated in the commercial agencies, engaged in the business of dealing in farm produce, as described herein within the state of Montana, shall on or before the first day of July of each year pay to the state

treasurer of the state of Montana, a license fee in the sum of $5.00, and upon the payment of such fee, the commissioner of agriculture shall issue to such person, firm, corporation or association of persons, a license to engage in such business at the place described within the state of Montana for the period of one year. Any person, firm, corporation or association of persons, except for a regularly established wholesale or retail dealer or merchant who is rated in the commercial agencies, who shall engage in or carry on any business for which a license is required by this act, or who shall continue to engage in such business after such license has been revoked, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than $10.00 nor more than $50.00, and each and every day for such business engaged in shall be a separate offense.

History: En. Sec. 1, Ch. 147, L. 1925.

Cross-Reference

Carrying on business without license, penalty, sec. 94-1511.

Collateral References

Licenses⇐16 (2).
53 C.J.S. Licenses § 30.

3-1602. (3649.2) **Acts constituting misdemeanor.** Any person, firm, corporation or association of persons engaged in the business of handling farm produce under license as described herein, who shall:

(a) Impose false charges for handling, or services in connection with farm produce; or

(b) Fail to account for such farm produce promptly and properly and to make settlements therefor, with intent to defraud; or

(c) Directly or indirectly purchase for his own account, goods, received by him upon consignment, except with the consent of the owner; or

(d) Makes false statements or reports as to grade, condition, markings, quality or quantity of goods received, shipped or packed in any manner with intent to deceive; is guilty of a misdemeanor, and the commissioner may forthwith revoke the license granted such person, firm, corporation, or association of persons.

History: En. Sec. 2, Ch. 147, L. 1925.

Collateral References

Licenses⇐38, 40.
53 C.J.S. Licenses §§ 44, 66-68.

3-1603. (3649.3) **Report of licensees—inspection—authority of commissioner of agriculture.** The commissioner of agriculture may require regular and special reports from licensees under this act at such times, and in such form as he may deem expedient. He may upon complaint cause the business of any licensee and the mode of conducting same to be inspected, and the books, records, accounts, papers and procedures of every such licensee shall at all times during business hours be subject to such inspection. It shall be the duty of the commissioner of agriculture to intervene in the interests of claimants in cases of insolvency, violations of the provisions of section 3-1602, or failure to report upon or pay for farm produce received by any such licensee. The commissioner of agriculture shall have power to demand payment of its undertaking by the surety upon any bond given under this act and it shall be the duty of the attorney general or any county attorney of this state to represent

the commissioner of agriculture in any necessary action against such bond when facts constituting grounds for action are laid before him.

History: En. Sec. 3, Ch. 147, L. 1925.

Collateral References

Licenses⊂25.
53 C.J.S. Licenses §§ 32, 35.

CHAPTER 17

COMMERCIAL FERTILIZER—REGULATION OF SALE

Section 3-1701 to 3-1711. Repealed.
3-1712. Title
3-1713. Enforcing official.
3-1714. Definition of terms.
3-1715. Registration and licenses.
3-1716. Labeling.
3-1717. Inspection fees.
3-1718. Inspection, sampling, analysis.
3-1719. Repealed.
3-1720. False or misleading statements.
3-1721. Grade-tonnage reports.
3-1722. Publications.
3-1723. Rules and regulations and hearings.
3-1724. Cancellation of registration.
3-1725. "Stop sale" orders.
3-1726. Seizure, condemnation, and sale.
3-1727. Violations-enforcement proceedings—judicial review.
3-1728. Exchanges between manufacturers.

3-1701 to 3-1711. (4208.1 to 4208.11) **Repealed—Chapter 55, Laws of 1965.**

Repeal

These sections (Secs. 1 to 11, Ch. 153, L. 1931; Secs. 1 to 7, Ch. 67, L. 1935; Secs. 1 to 5, Ch. 183, L. 1939; Secs. 1, 2, Ch. 72, L. 1947; Sec. 1, Ch. 129, L. 1951; Sec. 1, Ch. 33, L. 1959; Sec. 34, Ch. 147, L. 1963), relating to standards for and analysis of commercial fertilizer, were repealed by Sec. 3, Ch. 55, Laws 1965.

3-1712. Title. This act shall be known as the "Montana Fertilizer Law of 1957."

History: En. Sec. 1, Ch. 41, L. 1957.

3-1713. Enforcing official. This act shall be administered by the commissioner of agriculture of the state of Montana, hereinafter referred to as the "commissioner."

History: En. Sec. 2, Ch. 41, L. 1957.

3-1714. Definition of terms. (a) The term "fertilizer materials" means any substance containing nitrogen phosphorus, potassium, or any recognized plant nutrient element or compound which is used primarily for its plant nutrient content or for compounding mixed fertilizers except unmanipulated animal and vegetable manures.

(b) The term "mixed fertilizers" means any physical combination or mixture of fertilizer materials designed for use or claimed to have value in promoting plant growth.

(c) "Commercial fertilizer" includes mixed fertilizer and/or fertilizer materials.

(d) The term "bulk fertilizer" means commercial fertilizer distributed in nonpackaged form.

(e) "Brand" means a term, design, or trade-mark used in connection with one or several grades of commercial fertilizer.

(f) Guaranteed analysis:

(1) Until July 1, 1964, and thereafter until the commissioner prescribes the alternative form of "guaranteed analysis" in accordance with the provisions of subparagraph (2) hereof. The term "guaranteed analysis" shall mean the minimum percentage of plant nutrients claimed in the following order and form:

a. Total Nitrogen (N) .....per cent
Available Phosphoric Acid (P_2O_5).....per cent
Soluble Potash (K_2O) .....per cent

b. For unacidulated mineral phosphatic materials and basic slag, both total and available phosphoric acid and the degree of fineness. For bone, tankage, and other organic phosphatic materials, total phosphoric acid.

c. Guarantees for plant nutrients other than nitrogen, phosphorus and potassium may be permitted or required by regulation of the commissioner. The guarantees for such other nutrients shall be expressed in the form of the element. The sources of such other nutrients (oxides, salt, chelates, etc.) may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the commissioner. When any plant nutrients or other substances or compounds are guaranteed, they shall be subject to inspection and analysis in accord with the methods and regulations prescribed by section 3-1718 (b) of this act.

d. Except when prohibited by regulation, potential basicity or acidity expressed in terms of calcium equivalent in multiples of one hundred pounds per ton may be shown.

(2) At any time after July 1, 1964, that the commissioner finds, after public hearing following due notice, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in elemental form would not impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements among the states, he may require by regulation thereafter the "guaranteed analysis" shall be in the following form:

Total Nitrogen (N) .....per cent
Available Phosphorus (P) .....per cent
Soluble Potassium (K) .....per cent

provided, however, that the effective date of said regulation shall be not less than six (6) months following the issuance thereof, and provided, further, that for a period of two (2) years following the effective date of said regulation, the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid and potash; provided, however, that after the effective date of a regulation issued under the provisions of this section, requiring that phosphorus and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorus, and potassium shall constitute the grade.

(g) The term, "grade" means the percentages of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or soluble potash stated in whole numbers in the same terms, order and percentages as in the "guaranteed analysis."

(h) "Official sample" means any sample of commercial fertilizer taken by the chemist of the agricultural experiment station of Montana state college or his deputy.

(i) "Ton" means a net weight of two thousand (2,000) pounds avoirdupois.

(j) "Per cent" or "percentage" means the percentage by weight.

(k) "Person" includes individual, partnership, association, firm, and corporation.

(l) The term "distribute" means to offer for sale, sell, barter, or otherwise supply commercial fertilizers. The term "distributor" means any person who distributes.

(m) Words importing the singular number may extend and be applied to several persons or things, and words importing the plural number may include the singular.

(n) The term "registrant" means the person who registers commercial fertilizer under the provisions of this act.

(o) "Manipulated manures" means substances composed primarily of excreta, plant remains, or mixtures of such substances which have been processed in any manner, including the addition of plant nutrients, drying, grinding and other means.

(p) A specialty fertilizer is a commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries, and may include commercial fertilizers used for research or experimental purposes.

(q) A "soil amendment" is any material not included under commercial fertilizer, or unmanipulated animal and vegetable manures, lime, limestone, marl, unground bone, or those products subject to the Federal Insecticide, Fungicide or [and] Rodenticide Act as amended, which is added to soil or to plants for purposes of influencing the growth, yield or quality of the crop or soil flora or fauna or other soil characteristics.

History: En. Sec. 3, Ch. 41, L. 1957; amd. Sec. 1, Ch. 43, L. 1963.

The compiler has inserted the bracketed word "and" in paragraph (q).

Compiler's Note

The Insecticide, Fungicide and Rodenticide Act, referred to in paragraph (q), is compiled in the United States Code as Tit. 7, § 135 et seq.

Collateral References

Agriculture⇐7.
3 C.J.S. Agriculture §§ 16-23.

3-1715. Registration and licenses. (a) Each brand and grade of commercial fertilizer and each "soil amendment" shall be registered before being offered for sale, sold or distributed in this state. The application for registration shall be submitted to the commissioner on a form furnished by the commissioner and shall be accompanied by a fee of thirty-five dollars ($35) per brand and ten dollars ($10) per grade for each fertilizer and for each soil amendment guaranteeing plant nutrients and

claiming value as a fertilizer. The registration fee shall be five dollars ($5) for each soil amendment making no guarantees for plant nutrients or claims for fertilizer value. All fees collected shall be deposited in the state treasury to the credit of the earmarked revenue fund and shall be used for the expenses of administering this act. Upon approval by the commissioner, a copy of the registration shall be furnished to the applicant. All registrations expire on December 31 of each year. The application shall include the following information:

(1) The brand and grade.

(2) The guaranteed analysis.

(3) The sources from which the nitrogen, phosphorus and potassium are derived.

(4) The commissioner may require a manufacturer of commercial fertilizer or soil amendment to furnish additional information if the foregoing does not adequately describe the fertility value claimed and/or the composition of the product.

(5) The name and address of the registrant.

(b) A distributor shall not be required to register any brand or grade of commercial fertilizer which is already registered under this act by another person.

(c) The plant nutrient content of each and every brand and grade of commercial fertilizer must remain uniform for the period of registration.

(d) Any distributor who blends or mixes fertilizer materials to a customer's order without a guaranteed analysis of the mixture in accordance with part (a) of this section, must first make application to obtain a license from the commissioner. The application for such a license shall be submitted in duplicate to the commissioner on forms furnished by the commissioner and shall be accompanied by a fee as herein prescribed which sum shall constitute the license fee in event the license is granted. If said distributor blends or mixes fertilizer materials at more than one fixed location, or by more than one mobile mechanical unit, then a license is required for each location and for each such mobile mechanical unit. The licenses shall be twenty-five dollars ($25) in the case of each location but in the case of mobile units each such unit owned and operated by any one distributor shall be licensed at a rate of twenty-five dollars ($25) for the first unit, and ten dollars ($10) for each such additional mobile unit. The license shall expire on December 31 of each year.

Fees so collected shall be deposited in the state treasury to the credit of the earmarked revenue fund and shall be used for the expenses of administering this act. Each licensee shall furnish the commissioner with a confidential written statement of the tonnage of each grade of fertilizer material used by him in this state in his blending and mixing operation. Said statement shall cover the semiannual periods ending June 30 and December 31 of each year, and shall be filed with the commissioner not later than thirty days (which may be extended on valid reason therefor an additional thirty days, on written requests to the commissioner) after the close of each semiannual period. In lieu of the guaranteed analysis, the licensee must furnish to each and every purchaser and consumer in

written or printed form, an invoice or delivery ticket showing the net weight and guaranteed analysis of each and every one of the materials used, which shall accompany delivery.

The distributor shall at all times produce an intimate and uniform mixture of fertilizer materials or soil amendments. When two or more fertilizers are delivered in the same load, they shall be intimately and uniformly mixed unless they are in separate compartments.

The commissioner is authorized and empowered to cancel the license as herein provided upon satisfactory evidence that the licensee has used fraudulent and deceptive practices in the evasions or attempted evasions of the provisions of this section; provided that no license shall be revoked or refused until the licensee shall have been given a hearing by the commissioner pursuant to section 3-1723 of this act.

History: En. Sec. 4, Ch. 41, L. 1957; amd. Sec. 2, Ch. 43, L. 1963; amd. Sec. 35, Ch. 147, L. 1963; amd. Sec. 1, Ch. 55, L. 1965.

Collateral References

Agriculture⇐7.
3 C.J.S. Agriculture §§ 18, 20.
33 Am. Jur. 359, Licenses, § 34.

3-1716. Labeling. (a) Any commercial fertilizer offered for sale or sold or distributed in this state in bags, barrels, or other containers shall have placed on or affixed to the container in written or printed form the net weight and the information required by items 1, 2, and 5 of paragraph (a) section 3-1715 either (1) on tags affixed to the end of the package between the ears and/or the sewed end or (2) directly on the package in which case, for bags containing fifty (50) pounds or more, the grade shall appear also on the end or the side of the package in type that is plainly legible.

(b) If distributed in bulk, a written or printed statement of the weight and the information required by items 1, 2 and 5 of paragraph (a) of section 3-1715, shall accompany delivery and be supplied to the purchaser.

(c) Soil amendments shall be labeled in accordance with paragraph (a) of this section or if distributed in bulk, paragraph (b), and in addition shall show the name or chemical designation and content of the active ingredients.

History: En. Sec. 5, Ch. 41, L. 1957; amd. Sec. 3, Ch. 43, L. 1963.

Collateral References

Agriculture⇐7.
3 C.J.S. Agriculture § 21.
3 Am. Jur. 2d 820, Agriculture, § 52.

Constitutionality of requirement of disclosure by label of materials or ingredients of articles sold or offered for sale. 57 ALR 686.

Constitutionality, construction, and application of statutes relating to testing and sampling of agricultural fertilizers. 105 ALR 348 and 147 ALR 765.

3-1717. Inspection fees. (a) There shall be paid to the commissioner for all commercial fertilizers offered for sale, sold, or distributed in this state an inspection fee at the rate of fifteen cents (15¢) per ton: Provided that sales to manufacturers or exchanges between them are hereby exempted. All fees collected under this section shall be deposited in the state treasury to the credit of the earmarked revenue fund and shall be used for the expenses of administering this act. On individual packages of commercial fertilizer containing ten (10) pounds or less, there shall be

no inspection fee. Where a person sells commercial fertilizer in packages of ten (10) pounds or less and in packages over ten (10) pounds, the inspection fee shall apply only to that portion sold in packages of over ten (10) pounds.

(b) Payment of the inspection fee shall be evidenced by a statement made in due form of law, of commercial fertilizer distributed, together with documents showing that fees corresponding to the tonnage were received by the commissioner.

Every registrant who distributes commercial fertilizer in this state shall:

File an affidavit semiannually within thirty (30) days after each January 1 and each July 1 of each year setting forth the number of net tons of commercial fertilizer distributed in this state during the preceding six months' (6) period; and upon filing such statement shall pay the inspection fee at the rate stated in paragraph (a) of this section. If the tonnage report is not filed and the payment of the inspection fee is not made within fifteen (15) days after the date due, a collection fee amounting to ten (10) per cent (minimum ten dollars ($10.00)) of this amount due shall be assessed against the registrant, and the amount of fees due shall constitute a debt and become the basis of a judgment against the registrant.

History: En. Sec. 6, Ch. 41, L. 1957; amd. Sec. 36, Ch. 147, L. 1963; amd. Sec. 6, Ch. 248, L. 1965.

Collateral References
Agriculture⇐7.
3 C.J.S. Agriculture § 19.

3-1718. Inspection, sampling, analysis. (a) At the request of the commissioner of agriculture, the chemist of the agricultural experiment station of Montana state college or his deputy shall sample, inspect, make analysis of and test commercial fertilizers distributed within this state at time and place and to such an extent as he may deem necessary to determine whether such commercial fertilizers are in compliance with the provisions of this act. The chemist, individually or through his deputy, is authorized to enter upon any public or private premises during regular business hours in order to have access to commercial fertilizers subject to the provisions of this act and the rules and regulations pertaining thereto.

(b) The methods of analysis and sampling shall be those adopted by the chemist from sources such as those of the association of official agricultural chemists, and the results of analysis, together with such additional information as the said chemist may deem advisable, shall be transmitted promptly to the commissioner of agriculture, to the manufacturer and to the dealer or person in whose possession the product was sampled.

(c) The commissioner, in determining for administrative purposes whether any commercial fertilizer is deficient in plant food, shall be guided solely by the official sample as defined in paragraph (h) of section 3-1714, and obtained and analyzed as provided for in paragraphs (a) and (b) of this section.

(d) If on the basis of an inspection and/or the analysis of the official sample a commercial fertilizer is found to be subject to penalty or other legal action, the commissioner shall forward to the registrant notification

of the violation at least ten days before the report of the chemist is made public. If during that period no adequate evidence to the contrary is made available to the commissioner the report shall become official. Upon request the chemist of the agricultural experiment station at Montana state college shall furnish to the registrant a portion of any sample found subject to penalty or other legal action.

History: En. Sec. 7, Ch. 41, L. 1957.

3-1719. Repealed—Chapter 43, Laws of 1963.

Repeal

This section (Sec. 8, Ch. 41, L. 1957), relating to minimum chemical content of plant food, was repealed by Sec. 4, Ch. 43, Laws 1963.

3-1720. False or misleading statements. A commercial fertilizer is misbranded if it carries any false or misleading statement upon or attached to the container, or if false or misleading statements concerning its agricultural value are made on the container or in any advertising matter accompanying or associated with the commercial fertilizer. It shall be unlawful to distribute a misbranded commercial fertilizer.

History: En. Sec. 9, Ch. 41, L. 1957.

3-1721. Grade-tonnage reports. Each person registering commercial fertilizers under this act shall furnish the commissioner with a confidential written statement of the tonnage of each grade of commercial fertilizer sold by him in this state. Said statement shall include all sales for the periods of January 1 to and including June 30 and of July 1 to and including December 31 of each year. The commissioner may, in his discretion, cancel the registration of any person failing to comply with this section if the above statement is not made within thirty (30) days from day of the close of each period. The commissioner, however, in his discretion, may grant a reasonable extension of time. No information furnished under this section shall be disclosed in such a way as to divulge the operation of any person. This report may at the discretion of the registrant be combined with the report required by section 3-1717 (b).

History: En. Sec. 10, Ch. 41, L. 1957.

3-1722. Publications. The commissioner shall publish at least annually, in such forms as he may deem proper, information concerning the sales of commercial fertilizers, together with such data on their production and use as he may consider advisable, and report of the results of the analysis based on official samples of commercial fertilizers sold within the state.

History: En. Sec. 11, Ch. 41, L. 1957.

3-1723. Rules and regulations and hearings. (a) For the enforcement of this act, the commissioner is authorized to prescribe and, after public hearing: (1) having notified by mail all registrants on file and (2) having advertised once a week for two consecutive weeks in two newspapers of general circulation; to enforce such rules and regulations relating to the distribution of commercial fertilizers as he may find necessary to carry into effect the full intent and meaning of this act.

(b) The commissioner shall, before denying the application for a registration or before canceling or revoking any registration, set the matter down for a hearing, and at least ten (10) days prior to the date set for the hearing, shall notify the applicant or distributor in writing, which notice shall contain an exact statement of the charges made and the date and place of the hearing and shall afford the applicant or distributor an opportunity to be heard in person or by an attorney in reference thereto. The written notice may be served by delivering it personally to the applicant or distributor, or by mailing it by registered mail to the last known business address of the applicant or distributor. The hearing on such charges shall be held before the commissioner at such time and place as the commissioner shall prescribe, and the hearing may be continued from time to time.

History: En. Sec. 12, Ch. 41, L. 1957; amd. Sec. 5, Ch. 43, L. 1963.

3-1724. Cancellation of registration. The commissioner is authorized and empowered to cancel the registration of any commercial fertilizer or to refuse to register any commercial fertilizer as herein provided, upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasions or attempted evasions of the provisions of this act or any rules and regulations promulgated thereunder: Provided, that no registration shall be revoked or refused until the registrant shall have been given the opportunity to appear for a hearing by the commissioner, as provided in section 3-1723 of this act.

History: En. Sec. 13, Ch. 41, L. 1957; amd. Sec. 6, Ch. 43, L. 1963.

3-1725. "Stop sale" orders. The commissioner may issue and enforce a written or printed "stop sale, use, or removal" order to the owner or custodian of any lot of commercial fertilizer and to hold at a designated place when the commissioner finds said commercial fertilizer as being offered or exposed for sale in violation of any of the provisions of this act until the law has been complied with and said commercial fertilizer is released in writing by the commissioner or said violation has been otherwise legally disposed of by written authority. The commissioner shall release the commercial fertilizer so withdrawn when the requirements of the provisions of this act have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid.

History: En. Sec. 14, Ch. 41, L. 1957.

3-1726. Seizure, condemnation, and sale. Any lot of commercial fertilizer not in compliance with the provisions of this act shall be subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the area in which said commercial fertilizer is located. In the event the court finds the said commercial fertilizer to be in violation of this act and orders the condemnation of said commercial fertilizer, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer and the laws of the state: Provided, that in no instance shall the disposition of said commercial fertilizer be ordered by the court without

first giving the claimant an opportunity to apply to the court for release of said commercial fertilizer or for permission to process or relabel said commercial fertilizer to bring it into compliance with this act.

History: En. Sec. 15, Ch. 41, L. 1957.

Collateral References

Agriculture⇐7.
3 C.J.S. Agriculture § 22.

3-1727. Violations-enforcement proceedings—judicial review. (a) If it shall appear from the examination of any commercial fertilizer that any of the provisions of this act or the rules and regulations issued thereunder have been violated, the commissioner shall cause notice of the violations to be given to the registrant, distributor, or possessor from whom said sample was taken; any person so notified shall be given opportunity to be heard under such rules and regulations as may be prescribed by the commissioner. If it appears after such a hearing, either in the presence or absence of the person so notified, that any of the provisions of this act or rules and regulations issued thereunder have been violated, the commissioner may certify the facts to the proper prosecuting attorney.

(b) Any person convicted of violating any of the provisions of this act or the rules and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent said commissioner or his duly authorized agent in performance of his duty in connection with the provisions of this act, shall be adjudged guilty of a misdemeanor and shall be fined not less than three hundred dollars ($300) or more than five hundred dollars ($500) for the first violation, and not less than three hundred dollars ($300) or more than one thousand dollars ($1,000) for a subsequent violation. In all prosecutions under this act involving the composition of a lot of commercial fertilizer, a certified copy of the official analysis signed by the chemist shall be accepted as prima facie evidence of the composition.

(c) Nothing in this act shall be construed as requiring the commissioner or his representative to report for prosecution or for the institution of seizure proceedings minor violations of the act when he believes that the public interests will be best served by a suitable notice of warning in writing.

(d) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(e) The commissioner is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act or any rule or regulation promulgated under the act notwithstanding the existence of other remedies at law. Said injunction to be issued without bond.

(f) Any person adversely affected by an act, order or ruling made pursuant to the provisions of this act may within forty-five (45) days thereafter bring action in the district court of the county or any county where the alleged violation giving rise to the commissioner's act, order or ruling occurred, for new trial of the issues bearing upon such act, order or ruling, and upon such trial the court may issue and enforce such orders, judgments or decrees as the court may deem proper, just and equitable.

History: En. Sec. 16, Ch. 41, L. 1957; amd. Sec. 2, Ch. 55, L. 1965.

Collateral References
Agriculture⇨7.
3 C.J.S. Agriculture § 23.

3-1728. Exchanges between manufacturers. Nothing in this act shall be construed to restrict or avoid sales or exchanges of commercial fertilizers to each other by importers, manufacturers, or manipulators who mix fertilizer materials for sale or as preventing the free and unrestricted shipments of commercial fertilizer to manufacturers, or manipulators who have registered their brands and grades as required by the provisions of this act.

History: En. Sec. 17, Ch. 41, L. 1957.

CHAPTER 18

HAY DEALERS—BOND AND LICENSE

(Repealed—Section 1, Chapter 81, Laws of 1959)

3-1801 to 3-1807. Repealed.

Repeal

These sections (Secs. 1 to 7, Ch. 204, L. 1937), relating to the licensing of hay dealers, were repealed by Sec. 1, Ch. 81, Laws 1959.

CHAPTER 19

MUSTARD SEED—GRADE REQUIREMENTS—PURCHASER'S BOND AND LICENSE

Section 3-1901. Standard classes of mustard seed—grade requirements.
3-1902. Definitions and specifications.
3-1903. Weights per bushel.
3-1904. Moisture.
3-1905. Weevily mustard seed.
3-1906. Administration.
3-1907. Penalty.
3-1908. License and bond for persons contracting for purchase of mustard seed—when required.
3-1909. Enforcement.
3-1910. Disposal of funds.
3-1911. Revocation of licenses—reports.
3-1912. Penalty.

3-1901. Standard classes of mustard seed—grade requirements. The standard classes of mustard seed for the state of Montana shall be as follows:

Fancy—Cultivated tame yellow mustard seed.
Class 1—Cultivated tame yellow mustard seed.
Class 2—Cultivated tame brown mustard seed.
Class 3—Cultivated tame Montana oriental mustard seed.
Class 4—Mixed cultivated tame mustard seed, and
Sample—Hereinafter defined.

Classes 1, 2 and 3 shall contain not more than five per cent (5%) of other classes. Class 4 shall be any mixture of cultivated tame mustard seed having an admixture of other classes in excess of five per cent (5%), and shall be graded according to the predominating class in the mixture.

Sample grade shall include mustard seed which does not come within the requirements of any of the following grades, No. 1 to No. 3 inclusive, or which has any objectionable foreign odor or is sour, heating, hot, or is otherwise of distinctly low quality or contains small inseparable stones or cinders. Grade requirements for cultivated tame mustard seed. Based after the removal of dockage.

GRADE NUMBER	Sound Cultivated Mustard not less than	Damaged Kernels		Other Classes		Foreign Material Other Than Dockage		
		Total	Heat Damaged	Total	Wild Mustard	Total	Cockle Seed	Total Weed Seed Content
Fancy	99 %	1 %	0	0	0	0	0	.0
1	98½%	1½%	0.1%	0.5%	0.1%	1 %	0.1%	0.3%
2	97 %	3 %	0.2%	2.0%	0.2%	1½%	0.2%	0.5%
3	95 %	5 %	0.5%	5.0%	0.5%	2 %	0.3%	0.7%

Sample: Sample grade shall include mustard seed which does not come within the requirements of any of the grades, No. 1 to No. 3, inclusive, or which has any objectionable foreign odor or is sour, heating, hot, or is otherwise of distinctly low quality or contains small inseparable stones or cinders.

History: En. Sec. 1, Ch. 35, L. 1941; amd. Sec. 1, Ch. 170, L. 1957.

Collateral References
Agriculture⇨1.
3 C.J.S. Agriculture § 3.

3-1902. Definitions and specifications. The following definitions and specifications are hereby adopted and made legal:

(1) Damaged Seeds—Damaged seeds shall be all seeds and pieces of seeds of mustard seed, which are completely covered with mould, very green, sprouted, frosted, badly ground damaged, badly weather damaged, or otherwise distinctly damaged.

(2) Heat Damaged Seeds—Heat damaged seeds shall be seeds and pieces of seeds of mustard seed which have been distinctly discolored by external heat or as a result of heating caused by fermentation.

(3) Dockage—Dockage includes sand, dirt, weed seeds, weed stems, chaff, straw, mustard seed other than tame mustard and any other foreign material, which can be removed readily from the mustard by the use of appropriate sieves, cleaning devices or other practical means suited to separate the foreign material present, also undeveloped, shriveled and

small pieces of mustard seeds removed in properly separating the foreign material, which cannot be recovered by properly rescreening or recleaning. The quantity of dockage shall be calculated in terms of percentage. When less than one-half per cent (½%) it shall be disregarded. The percentage of dockage so determined and stated, shall be added to the grade designation. Dockage is to be calculated by the one-half per cent (½%), that is to say 0% to 0.4% will be designated as no dockage, 0.5% to 0.9% will be designated as ½% dockage, 1% to 1.4% will be designated as 1% dockage, 1.5% to 1.9% will be designated as 1½% dockage, and so on.

(4) Foreign Material Other Than Dockage—Foreign material other than dockage shall include all matter other than tame cultivated mustard seed, which is not separated in the proper determination of dockage.

Basis of Determination: Each determination of dockage, temperature, odor and live weevil or other insects injurious to stored mustard seed, shall be upon the basis of the seed as a whole. All other determinations shall be upon the basis of the seed when free from dockage.

(5) Percentages—Percentages, except in the case of moisture, shall be percentages ascertained by weight.

(6) Percentages of Moisture—Percentage of moisture shall be that ascertained by the Brown-Duval Moisture Tester and the method of use thereof described in U. S. D. A. Bulletin No. 1375 for testing flaxseed.

(7) Percentage of Dockage—Percentage of dockage shall be that ascertained by the Farrell Clipper Tester and Cleaner or any other cleaning device that will give equivalent results.

(8) Test Weight Per Bushel—The test weight per bushel shall be the weight per Winchester bushel as determined by the testing apparatus and the method of use thereof described in Bulletin 1065 U. S. D. A. dated May 18, 1922, or as determined by any device and method which give equivalent results in the determination of test weight per bushel.

(9) All Other Determinations—The percentage of damage, heat damage, sound cultivated mustard seed, foreign material and determinations of all other factors not otherwise provided for shall be on the basis of a portion cut from the original sample and separated by hand picking.

History: En. Sec. 2, Ch. 35, L. 1941.

3-1903. Weights per bushel. The following shall be legal test weights per bushel, namely: The weight per Winchester bushel as determined by the testing apparatus and the method of use thereof described in Bulletin 1065 U. S. D. A. dated May 18, 1922, or as determined by any device and method which give equivalent results in the determination of test weight per bushel.

Weight per bushel for tame yellow mustard seed shall be:

Fancy	56 lbs.
No. 1	54 lbs.
No. 2	52 lbs.
No. 3	50 lbs.

Weight per bushel for tame brown and tame Montana oriental mustard seed shall be:

No. 1	52 lbs.
No. 2	51 lbs.
No. 3	50 lbs.

All seeds weighing less than the above per bushel shall be graded as sample weight, provided that the percentage of damage, heat damage, sound cultivated mustard seed, foreign material and determination of all other factors not otherwise provided for shall be on the basis of a portion cut from the original sample and separated by hand picking.

History: En. Sec. 3, Ch. 35, L. 1941; amd. Sec. 2, Ch. 170, L. 1957.

3-1904. Moisture. The mustard seed in grades from one (1) to three (3) inclusive shall contain not more than eleven per cent (11%) moisture. "Tough" mustard seed shall be all mustard seed containing more than eleven per cent (11%) moisture and shall be graded and designated according to the grade requirements of the standards applicable to such seed if it were not tough and there shall be added to, and made a part of the grade designation, the word "tough."

History: En. Sec. 4, Ch. 35, L. 1941.

3-1905. Weevily mustard seed. Weevily mustard seed shall be mustard seed which is infested with live weevil or other insects injurious to stored grain. Weevily mustard seed shall be graded and designated according to the grade requirements of the standards applicable to such mustard seed if it were not weevily, and there shall be added, and made a part of the grade designation, the word, "weevily."

History: En. Sec. 5, Ch. 35, L. 1941.

3-1906. Administration. It is hereby made the duty of the commissioner of agriculture of the state of Montana to administer and enforce this act, and for such purpose he is hereby empowered to make all proper necessary rules and regulations, and he is also empowered to and he shall fix the fees for inspection and weighing of mustard seed and such fees shall be a lien upon such mustard seed until paid, and such fees shall be collected by the commissioner of agriculture or his duly authorized representatives and the commissioner of agriculture shall deposit such fees with the state treasurer in the earmarked revenue fund. All operating expenses of this act shall be paid from such fees.

History: En. Sec. 6, Ch. 35, L. 1941; amd. Sec. 37, Ch. 147, L. 1963.

3-1907. Penalty. Anyone violating any of the terms of this act shall upon conviction be guilty of a misdemeanor and shall be fined not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00).

History: En. Sec. 7, Ch. 35, L. 1941.

3-1908. License and bond for persons contracting for purchase of mustard seed—when required. All persons, firms, copartnerships, corpora-

tions and associations engaging in the business of contracting in advance of harvesting for the purchase of mustard seed crops to be paid for on delivery of said crop or crops, shall, on or before the first day of March of each year, pay to the state treasurer of Montana a license fee in the sum of ten dollars ($10.00) for the privilege of carrying on such business, and shall on or before said first day of March of each year, give a bond with good and sufficient sureties approved by the commissioner of agriculture of the state of Montana, in such sums as the commissioner may require but not less than ten thousand dollars ($10,000.00) conditioned upon the payment for such contracted seed at the price or prices specified in such contract, and upon the payment of such license fee of ten dollars ($10.00) and upon the approval of such bond by the commissioner of agriculture, said commissioner shall issue to such person or persons, firm, copartnership, corporation or association a license to engage in such business in the state of Montana for a period of one year.

Any person who shall commence the business aforesaid after the first day of March of any year shall be required to pay said license fee and to furnish such bond before engaging in or carrying on such business.

History: En. Sec. 1, Ch. 64, L. 1939.

Construction of Bond

In construing a mustard seed contractor bond, it is necessary to consider this section as part of the bond itself. Kohles v. St. Paul Fire & Marine Ins. Co., 144 M 395, 396 P 2d 724, 726.

Purpose

The purpose of this section is to benefit those farmers who have sold their crops "in advance of harvest." Kohles v. St. Paul Fire & Marine Ins. Co., 144 M 395, 396 P 2d 724, 726.

Recovery on Bond

Plaintiff who sold and delivered mustard seed to company which went bankrupt could not recover on a mustard seed contractor bond where he had the seed on hand and in storage when he contracted for sale. The seed was not planted or harvested in such year nor was it a growing crop during that year. Kohles v. St. Paul Fire & Marine Ins. Co., 144 M 395, 396 P 2d 724, 726.

Collateral References

Licenses⚿16 (2), 26, 29.

3-1909. Enforcement. It is hereby made the duty of the commissioner of agriculture to administer and enforce this act, and for that purpose he shall make all necessary and proper rules and regulations.

History: En. Sec. 2, Ch. 64, L. 1939.

3-1910. Disposal of funds. All funds accruing from license fees shall be deposited by the commissioner of agriculture with the state treasurer and shall be credited to the general fund.

History: En. Sec. 3, Ch. 64, L. 1939; amd. Sec. 38, Ch. 147, L. 1963.

3-1911. Revocation of licenses—reports. The commissioner of agriculture may revoke for cause any license issued hereunder, and any person, firm, copartnership, corporation or association licensed under the provisions of this act shall make a report to the commissioner of agriculture whenever he may require the same showing the amount of seed contracted.

History: En. Sec. 4, Ch. 64, L. 1939.

Collateral References

Licenses⚿38.

3-1912. Penalty. Any person, firm, copartnership, corporation, or association who shall engage in or carry on the business of contracting in advance of harvesting for the purchase of mustard seed crops to be paid for on delivery of said crop or crops, without having license therefor shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00), and each and every day that such business is so carried on or engaged in shall constitute a separate offense.

History: En. Sec. 5, Ch. 64, L. 1939.

CHAPTER 20

COMMERCIAL FEEDS—REGULATION

Section 3-2001 to 3-2011. Repealed.
3-2012. Enforcing official.
3-2013. Definitions of words and terms.
3-2014. Registration.
3-2015. Labeling.
3-2016. Inspection fees.
3-2017. Customer-formula feed, special-formula feed, made to order feed, and custom-mixed or custom-milled feeds.
3-2018. Adulteration.
3-2019. Misbranding.
3-2020. Inspection, sampling and analysis.
3-2021. Rules and regulations and hearings.
3-2022. Detained commercial feeds.
3-2023. Penalties.
3-2024. Publications.

3-2001 to 3-2011. Repealed—Chapter 127, Laws of 1963.

Repeal

These sections (Secs. 1 to 10, Ch. 228, L. 1943; Sec. 1, Ch. 42, L. 1951; Secs. 1 to 3, Ch. 127, L. 1951; Sec. 1, Ch. 82, L. 1959; Sec. 1, Ch. 166, L. 1959), relating to regulation of commercial feeds, were repealed by Sec. 15, Ch. 127, Laws 1963.

3-2012. Enforcing official. This act shall be administered by the commissioner of agriculture of the state of Montana, hereinafter referred to as the "commissioner."

History: En. Sec. 1, Ch. 127, L. 1963.

3-2013. Definitions of words and terms. When used in this act:

(a) The term "person" includes individual, partnership, association, firm and corporation.

(b) The term "distribute" means to offer for sale, sell, or barter commercial feed or customer-formula feed; or to supply, furnish or otherwise provide commercial feed or customer-formula feed to a contract feeder; the term "distributor" means any person who distributes.

(c) The term "sell" or "sale" includes exchange.

(d) The term "commercial feed" includes customer-formula feeds as this term is used in this act and means any material whether simple, mixed, compounded, ground, unground, organic or inorganic, used as a feed for animals other than man, or any material including minerals, vitamins, antibiotics, antioxidants, medicines, drugs, chemicals and other substances, materials, or elements, or parts thereof intended for use or

used as an ingredient or component of a mixture of materials, used as a feed for animals other than man except:

(1) The mixed or unmixed whole seeds or meals made directly from and consisting of the entire seeds of corn, wheat, rye, barley, oats, buckwheat, flaxseeds, kaffir, milo and other grain seeds in combination or without molasses and containing no other ingredients.

(2) Unground hay.

(3) Whole or ground straw, stover, silage, cobs, husks, hulls, and wet beet pulp when not mixed with other materials and/or not pelleted.

(4) Individual chemical compounds when not mixed with other materials.

(5) Feeds used solely for household pets.

(6) Materials furnished by the customer-buyer and which were produced by the customer-buyer or acquired by him from a source other than from the person whose services are engaged in the milling, mixing, or processing of a mixture prepared for and in accordance with the specific instructions of the customer-buyer.

(e) The term "feed ingredient" means each of the constituent materials making up a commercial feed.

(f) The term "customer-formula feed" means a mixture of commercial feeds and/or materials each batch of which mixture is mixed according to the specific instructions of the final purchaser, or contract feeder.

(g) The term "brand" means the term, design, trade-mark, or other specific designation under which an individual commercial feed is distributed in this state.

(h) The term "label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed or customer-formula feed is distributed, or on the invoice or delivery slip with which a commercial feed or customer-formula feed is distributed.

(i) The term "ton" means a net weight of two thousand pounds avoirdupois.

(j) The terms "per cent" or "percentage" means percentage by weight.

(k) The term "official sample" means any sample of feed taken by the chemist of the agricultural experiment station of Montana state college or his deputy and designated as "official" by the chemist.

(l) The term "contract feeder" means a person who, as an independent contractor, feeds commercial feed and/or customer-formula feed to animals pursuant to a contract whereby such commercial feed and/or customer-formula feed is supplied, furnished or otherwise provided to such person and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product.

(m) The terms "purchaser" and "customer-buyer" mean any person, firm, organization, agency, association, or group who buys or otherwise acquires a commercial feed, customer-formula feed, or custom-mix or custom-mill services.

(n) The term "custom-mix" or "custom-mill" means services only.

(o) An ultimate consumer, means a person who feeds all or part of the feeds which he has received from the distributor.

History: En. Sec. 2, Ch. 127, L. 1963.

Collateral References
Agriculture⇐1.
3 C.J.S. Agriculture § 2.

3-2014. Registration. (a) Each commercial feed shall be registered before being distributed in this state; provided, however, that customer-formula feeds are exempt from registration. The application for registration shall be submitted to the commissioner on forms furnished by the commissioner and shall be accompanied by a fee of ten dollars ($10.00) for each commercial feed submitted for registration. Upon the request of the commissioner, each such registration shall be accompanied by a label or other printed matter describing the product, and shall include the information required by subparagraphs (2), (3), (4) and (5), of paragraph (a) of section 3-2015. Upon approval by the commissioner, a copy of the registration shall be furnished to the applicant. Once registered, the registration of a feed shall be renewed by December 31 of each year by payment of an annual fee of ten dollars ($10.00). Moneys collected under the provisions of this section shall be deposited in the state treasury to the credit of the earmarked revenue fund and shall be used for the expenses of administering this act.

The commissioner may by regulation permit on the registration the alternative listing of ingredients of comparable feeding value, provided that the label for each package shall state the specific ingredients which are in such package.

(b) A distributor shall not be required to register any brand of commercial feed which is already registered under this act by another person.

(c) Changes in the guarantee of either chemical or ingredient composition of a registered commercial feed may be permitted by the commissioner provided there is satisfactory evidence that such changes would not result in a lowering of the feeding value of the product for the purpose for which designed.

(d) The commissioner is empowered to refuse registration of any application not in compliance with the provisions of the act and to cancel any registration subsequently found not to be in compliance with any provisions of this act; provided, however, that no registration shall be refused or canceled until the registrant shall have been given opportunity to be heard before the commissioner and to amend his application in order to comply with the requirements of this act.

History: En. Sec. 3, Ch. 127, L. 1963; amd. Sec. 7, Ch. 248, L. 1965.

Collateral References
Agriculture⇐1; Licenses⇐16 (1).
3 C.J.S. Agriculture § 2; 53 C.J.S. Licenses § 30.

3-2015. Labeling. (a) Any commercial feed distributed in this state shall be accompanied by a legible label as approved by the commissioner, bearing the following information:

(1) The net weight.

(2) The name or brand under which the commercial feed is sold.

(3) The guaranteed analysis of the commercial feed, listing the minimum percentage of crude protein, minimum percentage of crude fat, and maximum percentage of crude fiber. For mineral feeds the list shall include the following if added:

Minimum and maximum percentages of calcium (Ca), minimum percentage of phosphorus (P), minimum percentage of iodine (I), and minimum and maximum percentages of salt (NaCl). Other substances or elements, determinable by laboratory methods, may be guaranteed by permission of the commissioner. When any items are guaranteed, they shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the commissioner. Products sold solely as minerals and/or vitamin supplements and guaranteed as specified in this section need not show guarantees for protein, fat and fiber.

(4) The common or usual name of each ingredient used in the manufacture of the commercial feed, except as the commissioner may by regulation, permit the use of a collective term for a group of ingredients all of which perform the same function.

(5) The name and principal address of the person responsible for distributing the commercial feed.

(b) When a commercial feed is distributed in this state in bags or other containers, the label shall be placed on or affixed to the container; when a commercial feed is distributed in bulk, the label shall accompany delivery and be furnished to the purchaser at the time of delivery.

(c) A customer-formula feed shall be labeled by invoice. The invoice, which is to accompany delivery and be supplied to the purchaser at the time of delivery, shall bear the following information:

(1) Name and address of the mixer.

(2) Name and address of the purchaser.

(3) Date of sale.

(4) Brand name and number of pounds of each registered commercial feed used in the mixture and the name and number of pounds of each other feed ingredient added.

(d) If a commercial feed or a customer-formula feed contains a nonnutritive substance which is intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease or which is intended to affect the structure or any function of the animal body, the commissioner may require the label to show the amount present, directions for use, and/or warnings against misuse of the feed.

History: En. Sec. 4, Ch. 127, L. 1963.

3-2016. Inspection fees. (a) Each and every person who distributes commercial feed in this state to the ultimate consumer shall pay to the commissioner an inspection fee, based on the gross annual value of feed distributed in this state, according to the following schedule:

Up to and including five hundred dollars ($500.00) gross annual value of feeds distributed.....$10.00.

Over five hundred dollars ($500.00) and up to and including one hundred thousand dollars ($100,000.00) gross annual value of feeds distributed ..... $25.00.

Each and every twenty-five thousand dollars ($25,000.00) additional gross annual value of feeds distributed or fraction thereof, an additional inspection fee of $10.00;

provided, however, that distribution of commercial feeds to manufacturers are hereby exempted if the commercial feeds so distributed are used solely in the manufacture of feeds which are registered. Moneys collected under the provisions of this section shall be deposited in the state treasury to the credit of the earmarked revenue fund and shall be used for the expenses of administering this act.

(b) Every person, except as hereinafter provided, who distributes commercial feed in this state shall:

(1) File, not later than the last day of January of each year, a statement setting forth the gross annual value of feeds distributed in this state during the preceding calendar year; and upon filing such statement shall pay the inspection fee at the rate stated in paragraph (a) of this section. When more than one (1) person is involved in the distribution of a commercial feed, the person who distributes to the consumer is responsible for reporting the gross annual value of feeds so distributed and paying the inspection fee.

(2) Keep such records as may be necessary or required by the commissioner to indicate accurately the gross annual value of commercial feeds distributed in the state, and the commissioner or his authorized agent shall have the right to examine such records to verify statement of gross annual value of feeds distributed. Failure to make an accurate statement of the gross annual value of feeds distributed or to pay the inspection fee or to comply as provided for in this section shall constitute sufficient cause for the cancellation of all registrations on file for the distributor after a hearing as provided in this act, and the distributor shall be subject to the penalties set forth in section 3-2023.

History: En. Sec. 5, Ch. 127, L. 1963; amd. Sec. 8, Ch. 248, L. 1965.

3-2017. Customer-formula feed, special-formula feed, made to order feed, and custom-mixed or custom-milled feeds. (a) The terms "customer-formula feed," "special-formula feed" and "made to order feed" are synonymous and mean a mixture of commercial feed and/or feed material, all or any part of which except for molasses, is furnished by the person or distributor who processes, mixes, mills, or otherwise prepares such mixture, and which is mixed according to the specific instructions of the purchaser. The name and quantity of each item supplied by the purchaser must be shown and properly identified as such on the invoice furnished the purchaser and the portion of such mixture that is furnished by the person or distributor who processes, mixes, mills or otherwise prepares such mixture, shall likewise be shown on the invoice setting forth the information provided for in section 3-2015 (c), (d).

(b) No manufacturer or other person shall mix, mill, process or engage in a practice of mixing, milling, or preparation of a customer-formula feed without complying with the provisions of section 3-2016.

(c) Under section 3-2013 (d), the term "commercial feed" is defined to include customer-formula feed. This definition is hereby reaffirmed, and all of the provisions of this act which apply to commercial feed also apply with equal force and effect upon "customer-formula feed" except where the language specifically exempts "customer-formula feed."

(d) The terms "custom-mixed," "custom-milled," or similar terms means the service rendered a customer or purchaser in the milling, mixing, or processing of materials produced by the customer or purchaser or acquired by him from a source other than from the person who mixes, mills, or processes the mixture, except that the addition of molasses acquired from the person who mixes, mills, or processes the mixture shall not be deemed to render such feed a commercial feed, and are not subject to the provisions of this act.

History: En. Sec. 6, Ch. 127, L. 1963.

Collateral References

Adulteration⊂⊃4.
2 C.J.S. Adulteration § 6.

3-2018. Adulteration. No person shall distribute an adulterated feed. A commercial feed or customer-formula feed shall be deemed to be adulterated:

(a) If any poisonous, deleterious or nonnutritive ingredient has been added in sufficient amount to render it injurious to health when fed in accordance with directions for use on the label.

(b) If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor.

(c) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling.

(d) If it contains added hulls, screenings, straw, cobs, or other high fiber material unless the name of each such material is stated on the label.

History: En. Sec. 7, Ch. 127, L. 1963.

3-2019. Misbranding. No person shall distribute misbranded feed. A commercial feed or customer-formula feed shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular.

(b) If it is distributed under the name of another feed.

(c) If it is not labeled as required in section 3-2015 and in regulations prescribed under this act.

(d) If it purports to be or is represented as a feed ingredient, or if it purports to contain or is represented as containing a feed ingredient, unless such feed ingredient conforms to the definition of identity, if any, prescribed by regulation of the commissioner; in adopting of such regulations the commissioner shall give due regard to commonly accepted

definitions such as those issued by the association of American feed control officials.

(e) If any word, statement, or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

History: En. Sec. 8, Ch. 127, L. 1963.

3-2020. Inspection, sampling and analysis. (a) At the request of the commissioner of agriculture, the chemist of the agricultural experiment station of Montana state college or his deputy shall sample, inspect, make analysis of and test commercial feeds and customer-formula feeds distributed within this state at such time and place and to such extent as he may deem necessary to determine whether such feeds are in compliance with the provisions of this act. The chemist individually or through his deputy, is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours in order to have access to commercial feeds and customer-formula feeds and to records relating to their distribution.

(b) The method of sampling and analysis shall be those adopted by the chemist from sources such as the journal of the association of official agricultural chemists.

(c) The commissioner, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided solely by the official sample as defined in paragraph (k) of section 3-2013 and obtained and analyzed as provided for in paragraph (b) of this section.

(d) When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, the results of the analysis shall be forwarded by the chemist to the distributor and purchaser and registrant. Upon request within ten (10) days the chemist shall furnish to the registrant a portion of the official sample concerned. If the registrant fails to agree with the analysis of the chemist, he may request an umpire who shall be one (1) of a list of not less than three (3) public chemists of recognized ability in feed analysis who shall be named by the chemist. Such umpire analysis shall be made at the expense of the registrant requesting the same. The request for an umpire analysis must be made within ten (10) days after receipt of a portion of the official sample, and the results of the umpire analysis must be mailed to the chemist within twenty (20) days from the date the portion of the official sample is received by the registrant of the feed in question. In case the umpire shall agree more closely with the chemist, the figures of the latter shall be considered correct, and in case the umpire shall agree more closely with the figures of the registrant, then the figures of the registrant shall be considered correct.

History: En. Sec. 9, Ch. 127, L. 1963.

3-2021. Rules and regulations and hearings. (a) For the enforcement of this act, the commissioner is authorized to prescribe and, after public hearing; (1) having notified by mail all registrants on file and (2) having advertised once a week for two (2) consecutive weeks in two (2) newspapers of general circulation; to enforce such rules and regulations relating to the distribution of commercial feeds as he may find necessary to carry into effect the full intent and meaning of this act.

(b) The commissioner shall, before denying the application for a registration or before canceling or revoking any registration, set the matter down for a hearing and at least ten (10) days prior to the date set for the hearing, shall notify the applicant or distributor in writing, which notice shall contain an exact statement of the charges made and the date and place of the hearing and shall afford the applicant or distributor an opportunity to be heard in person, or by an attorney in reference thereto. The written notice may be served by delivering it personally to the applicant or distributor, or by mailing it by registered mail to the last known business address of the applicant or distributor. The hearing on such charges shall be held before the commissioner at such time and place as the commissioner shall prescribe, and the hearing may be continued from time to time.

History: En. Sec. 10, Ch. 127, L. 1963.

3-2022. Detained commercial feeds. (a) "Withdrawal from sale" orders. When the commissioner or his authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of this act or of any of the prescribed regulations under this act, he may issue and enforce a written or printed "withdrawal from sale" order, warning the distributor not to dispose of the lot of feed in any manner until written permission is given by the commissioner or the district court. The commissioner shall release the lot of commercial feed so withdrawn when said provisions and regulations have been complied with. If compliance is not obtained within thirty (30) days, the commissioner may begin, or upon request of the distributor shall begin proceedings for condemnation.

(b) Condemnation and confiscation. Any lot of commercial feed not in compliance with said provisions and regulations shall be subject to seizure on complaint of the commissioner to a district court of competent jurisdiction in the area in which said commercial feed is located.

In the event the district court finds the said commercial feed to be in violation of this act and orders the condemnation of said commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state; provided, that in no instance shall the disposition of said commercial feed be ordered by the district court without first giving the claimant an opportunity to apply to the district court for release of said commercial feed or for permission to process or relabel said commercial feed to bring it into compliance with this act.

History: En. Sec. 11, Ch. 127, L. 1963.

3-2023. Penalties. (a) Any person convicted of violating any of the provisions of this act or the rules and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent said commissioner of his duly authorized agent in performance of his duty in connection with the provisions of this act, shall be adjudged guilty of a misdemeanor and shall be fined not less than three hundred dollars ($300.00) or more than five hundred dollars ($500.00) for the first violation, and not less than three hundred dollars ($300.00) or more than one thousand dollars ($1,000.00) for a subsequent violation. In all prosecutions under this act involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the chemist shall be accepted as prima facie evidence of the composition.

(b) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the commissioner reports a violation for such prosecution, an opportunity shall be given the distributor and registrant to be heard before the commissioner pursuant to section 3-2021.

(c) The commissioner is hereby authorized to apply to the district court of the county or any county wherein a violation has occurred, to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act or any rule or regulation promulgated under the act notwithstanding the existence of other remedies of law. Said injunction to be issued without bond.

(d) Any person adversely affected by an act, order or ruling made pursuant to the provisions of this act may within forty-five (45) days thereafter bring action in the district court of the county or any county where the alleged violation giving rise to the commissioner's act, order or ruling occurred, for new trial of the issues bearing upon such act, order or ruling, and upon such trial the court may issue and enforce such orders, judgments or decrees as the court may deem proper, just and equitable.

History: En. Sec. 12, Ch. 127, L. 1963.

3-2024. Publications. The commissioner may publish at least annually, in such forms as he may deem proper, information concerning the sales of commercial feeds, together with such data on their production the use as he may consider advisable, and a report of the results of the analyses of official samples of commercial feeds sold within the state as compared with the analyses guaranteed in the registration and on the label; provided, however, that the information concerning production and use of commercial feeds shall not disclose the operations of any person.

History: En. Sec. 13, Ch. 127, L. 1963.

CHAPTER 21

POULTRY PRODUCTS—FRUITS AND VEGETABLES—MARKETING REGULATIONS

Section 3-2101. Declaration of policy regarding sale of poultry products, fruits, and vegetables.
3-2102. Definitions.
3-2103. Trade area—petition for establishment.
3-2104. Hearing and notice thereof—appointment of committee—duties.
3-2105. Discounts and rebates unlawful.
3-2106. Committee for trade area—members—duties—operation of act, how discontinued.
3-2107. Certain practices not prevented by act.
3-2108. Organized producers may employ broker or establish sales co-operative.
3-2109. Violation of act a misdemeanor—jurisdiction of district courts.

3-2101. Declaration of policy regarding sale of poultry products, fruits, and vegetables. This act is enacted under the police power of the state of Montana and its purposes are to protect the public health and welfare. It is hereby declared that unhealthful, unfair, unjust, destructive, demoralizing and uneconomic trade practices exist in the production, sale and distribution of poultry products, fruits and vegetables, whereby the very existence of the producing industry in the state of Montana is imperiled; that the production of poultry products, fruits and vegetables is one of the principal industries of this state and one on which the continued prosperity of this state depends; existing economic conditions have broken down the purchasing power of the producers for other products, have threatened the entire producing industry with bankruptcy and have thus seriously reduced agricultural assets so that the credit structure of the entire people of the state of Montana has been affected and the welfare of the state and its local subdivisions threatened. The foregoing statements of fact, policy, and application of this act are hereby declared as a matter of legislative determination.

History: En. Sec. 1, Ch. 154, L. 1941.

Collateral References

Food⇐5.
36A C.J.S. Food § 15.

3-2102. Definitions. That as used in this act:

(a) The term "producer" means any bona fide farmer who actually produces commodities covered by this act.

(b) The term "broker" means any person who acts as an agent for producers or wholesalers.

(c) The term "wholesaler" means any person or firm licensed by the state of Montana for the purpose of selling or distributing to retailers.

(d) The term "retailer" means any person selling to consumers and licensed by the state of Montana as a retailer.

(e) The words "processor," "handler," or "manufacturer" mean anyone manufacturing, processing and distributing products under the provisions of this act, and may mean one who sells to a wholesaler or retailer.

(f) The term "consumer" means anyone who purchases for the purpose of consuming the article purchased.

(g) The term "trade area" means a geographical area in which the price for the commodities covered by this act are affected by the same competitive factors.

(h) The term "person" means a natural person, firm, corporation, partnership, association, trust, lessee, co-operative, trustee, or receiver, as the context may require, regardless of the gender of the pronoun used in conjunction therewith.

History: En. Sec. 2, Ch. 154, L. 1941.

3-2103. Trade area—petition for establishment. When producers or processors of any trade area desire to apply the provisions of this act, they shall petition the commissioner of agriculture, labor and industry and request a hearing on the need for the establishment of the trade area proposed. Such petitions must be signed by at least sixty per cent (60%) of the producers or processors in the proposed trade area, and shall apply only to a product which is one of the major products generally and usually grown within the proposed trade area.

History: En. Sec. 3, Ch. 154, L. 1941.

Compiler's Note

The department of agriculture, labor and industry has been divided into two separate departments; the department of agriculture headed by the commissioner of agriculture and the department of labor and industry headed by the commissioner of labor and industry. See Const., art. XVIII, sec. 1 and sec. 3-101.1.

3-2104. Hearing and notice thereof—appointment of committee—duties. The commissioner of agriculture shall set the hearing requested within not less than seven (7) nor more than fifteen (15) days after the receipt of the petition provided by section 3-2103. Representatives of producers, processors, wholesalers, retailers and consumers shall be entitled to present evidence at said hearing as to whether the establishment of the proposed trade area is desirable to promote the economic welfare of the district in question and if it is necessary to prevent the unfair trade practices enumerated in section 3-2101. Said producer, wholesaler, retailer and consumer shall be notified of the date of said hearing by a publication of notice of said hearing in a daily or weekly newspaper regularly published in the proposed trade area. The cost of such publication shall be paid by the petitioners. After all the evidence is presented it shall be the duty of the commissioner of agriculture within fifteen (15) days to determine whether the petition for the creation of the trade area will be allowed. If, in the opinion of the commissioner of agriculture, a trade area is needed and is necessary to the economic welfare of that area, he shall appoint a committee as provided by section 3-2106 to hold further hearings and hear recommendations for the establishment of price schedules and price margins. This committee, as soon as possible, shall call representatives of producers, wholesalers, retailers and consumers to make recommendations for the proposed price and margin schedules. The committee after hearing shall then provide for:

(a) A margin on percentage basis from wholesaler or processor to retailer;

(b) A margin on percentage basis from retailer to consumer;

(c) A quantity discount shall be allowed on purchases from wholesaler to retailer;

(d) A quantity discount shall be allowed on purchases from retailers to consumers;

(e) These margins shall be based on the cost of doing business and shall be put in effect to prevent price cutting or using as leaders any of the products covered by this act;

(f) The committee shall also set up a price schedule for producers for the product in question;

(g) Any retailer or wholesaler will be allowed to meet a legal price as provided by this act, even if not purchasing on the basis of a quantity discount.

(h) Restaurants, hotels, and like establishments shall be considered as retailers under the provisions of this act.

(i) The price schedules shall be minimum prices, and nothing in this act shall prevent a higher price.

History: En. Sec. 4, Ch. 154, L. 1941.

Compiler's Note

The compiler has, pursuant to section 3-101.1, substituted "commissioner of agriculture" for "commissioner of agriculture, labor and industry" in this section.

3-2105. Discounts and rebates unlawful. It shall be a violation of this act to give any special discounts, rebates or attempt to break down prices paid to producers, or margins of wholesalers and retailers as provided for under this act.

History: En. Sec. 5, Ch. 154, L. 1941.

3-2106. Committee for trade area—members—duties—operation of act, how discontinued. The commissioner of agriculture shall appoint a committee for each commodity for which a trade area has been created which shall serve without pay and shall hold office at the will of the commissioner, but the commissioner shall appoint said committee from a list presented to him by interested groups and representing said groups as provided in this section.

This committee shall consist of five (5) members, two (2) of whom shall be representatives of producers, one (1) a representative of processors or wholesalers, one (1) a representative of retailers and one (1) a representative of consumers. It shall be the duty of this committee to study market conditions and trade practices and this committee is authorized from time to time to make changes in prices paid to producers on any product or products, specified in the petition, should a change in competitive factors pertaining to that product justify it. The committee is further authorized and empowered to set the margin schedule provided in section 3-2104, but the margins fixed by the committee provided by section 3-2104 shall continue in full force and effect unless sixty (60%) per cent of the producers, processors, wholesalers and retailers ask for another hearing to determine fair margins or to discontinue the operation of the act in any trade area; but the operation of the act cannot be discontinued unless requested by a petition of sixty (60%) per cent of the producers of

any commodity covered by this act, and when such petition is filed with the commissioner of agriculture, he shall abolish the trade area.

History: En. Sec. 6, Ch. 154, L. 1941.

Compiler's Note

The compiler has, pursuant to section 3-101.1, substituted "commissioner of agriculture" for "commissioner of agriculture, labor and industry" in this section.

3-2107. Certain practices not prevented by act. Nothing in this act shall prevent producers or wholesalers from selling outside the trade area at a price different on any product for which the price is fixed within the trade area; providing such sale is not made within another trade area, contrary to the prices and margins set up in such trade area. Nor shall it prevent groups of producers, wholesalers or retailers from using a quota basis upon such sales in order to stabilize prices on any commodity within the trade area; provided further that nothing in this act shall prevent the payment of the customary brokerage fee. The provisions of this act shall not operate, or be construed, to impair, restrict or in anywise interfere with the jurisdiction, authority and functions of the milk control board.

History: En. Sec. 7, Ch. 154, L. 1941.

3-2108. Organized producers may employ broker or establish sales co-operative. Organized groups of producers shall have the right to employ a broker or establish a sales co-operative within the trade area where a reasonable charge for selling may be made.

History: En. Sec. 8, Ch. 154, L. 1941.

3-2109. Violation of act a misdemeanor—jurisdiction of district courts. (a) Any person, firm or corporation either as principal, agent, officer or director for him or itself or for another person or for any firm or corporation or any corporation who or it shall violate any of the provisions of this act is guilty of a misdemeanor.

(b) The several district courts of the state of Montana are hereby invested with jurisdiction to enforce this act and prevent and restrain violations thereof or any lawful order or regulation promulgated by any committee appointed under this act.

History: En. Sec. 9, Ch. 154, L. 1941.

CHAPTER 22

POULTRY IMPROVEMENT

Section 3-2201. Powers and duties of commissioner of agriculture.
3-2201.1 Poultry improvement board abolished.
3-2202. Definitions.
3-2203. Board to serve without compensation.
3-2204. Powers and duties.
3-2205. License fees.
3-2206. Repealed.
3-2207. Disposition of fees.
3-2208. Repealed.
3-2209. Products to be labeled.
3-2210. Certain advertising prohibited.
3-2211. May cancel certificates.
3-2212. Violation a misdemeanor.

3-2201. Powers and duties of commissioner of agriculture. The commissioner of agriculture shall have the following powers and duties:

(1) To promote the welfare of the poultry industry in Montana by: (a) determining dependable sources from which poultry may be purchased; (b) co-operating with other state and federal agencies in programs which will advance, promote, and improve the poultry industry in Montana; (c) improving poultry breeding in Montana by certification of the systematic breeding programs of the various hatcheries within the state; (d) co-operating with the Montana livestock sanitary board in controlling and eradicating communicable and infectious diseases of poultry; (e) by systematic inspection of chick dealers, hatcheries and hatching-egg-producers engaged in marketing poultry and poultry products.

(2) To act as the official state agency for Montana in co-operation with the animal and poultry research branch, United States department of agriculture, for the purpose of furthering the objectives and supervising the state's participation in the national poultry improvement plan.

The commissioner of agriculture shall appoint a poultry advisory board consisting of the extension specialist on poultry, Montana state college, and two other members who shall be competent and experienced poultrymen, who shall be the owners or operators of commercial poultry hatcheries. The commissioner may call on this board from time to time for advice in administering the poultry improvement program.

History: En. Sec. 1, Ch. 141, L. 1945; amd. Sec. 1, Ch. 46, L. 1957; amd. Sec. 2, Ch. 59, L. 1961.

Collateral References
States⇨44, 53.
81 C.J.S. States § 55.

3-2201.1. Poultry improvement board abolished. The Montana poultry improvement board is abolished. All records and property, including unexpended appropriations, and any other moneys of the Montana poultry improvement board are transferred to the department of agriculture.

History: En. Sec. 1, Ch. 59, L. 1961.

3-2202. Definitions. As used in this act unless the context otherwise requires, "commissioner" means the "commissioner of agriculture."

"Breeder" means any person, firm, corporation or association that breeds, handles or deals in chickens, ducks, geese, turkeys or other domestic fowl.

"Hatcher" means any person who is in the business of hatching the eggs of chickens, ducks, geese, turkeys or other domestic fowl by natural or artificial means.

"Distributor" means any person, who is in the business of distributing, selling, or otherwise disposing of to the public of baby, young or other chickens, ducks, geese, turkeys or other domestic fowl, or eggs for hatching purposes including what is known as "over the counter sale" of baby chicks.

"Hatching-egg-producer" means any person who keeps poultry and from such poultry produces eggs for sale or other disposal for hatching purposes.

"Poultry" means chickens, ducks, geese, turkeys or other domestic fowl.

History: En. Sec. 2, Ch. 141, L. 1945; amd. Sec. 3, Ch. 59, L. 1961.

3-2203. Board to serve without compensation. The members of the Montana poultry advisory board shall serve without compensation as such, but the expenses of each, necessarily incurred in the discharge of his duties, shall be paid by the state.

History: En. Sec. 3, Ch. 141, L. 1945; amd. Sec. 10, Ch. 59, L. 1961.

3-2204. Powers and duties. The commissioner is authorized and directed to formulate and adopt a plan or plans whereby hatchery, baby chick and/or poult dealers and hatching-egg-producers shall be inspected by employees of the department of agriculture.

No one shall be refused a license or have his license canceled under this act unless and until he has been given an opportunity to have a hearing on the matter before the commissioner. The person concerned may obtain same by submitting a written request to the commissioner for such hearing. The commissioner, in setting the time for hearing, shall give at least twenty (20) days' notice of said hearing to such person. The commissioner will adopt reasonable rules and regulations governing the conduct of hearings and shall specifically provide that any person requesting such hearing be permitted to be represented by legal counsel.

The commissioner may adopt a standard breeding plan of accreditation and certification sponsored by the United States department of agriculture or any other plan sponsored by said department and to co-operate with said department in matters of poultry improvement and sanitary provisions. The commissioner is further authorized to prescribe and collect fees for inspection and supervision and to prescribe and furnish labels, bands and certificates of accreditation and certification and such other supplies as may be necessary; and to prescribe and collect fees for the same. The commissioner is further authorized to do such other things as he may deem needful and expedient to improve poultry breeding, poultry sanitation, and practices, and to give effect to this act.

History: En. Sec. 4, Ch. 141, L. 1945; amd. Sec. 2, Ch. 46, L. 1957; amd. Sec. 4, Ch. 59, L. 1961.

Collateral References
States⇐66, 73.
81 C.J.S. States § 66.

3-2205. License fees. No person shall hereafter engage in the business of a hatchery, baby chick and/or poult dealer, salesman, or hatching-egg-producer in Montana, without first securing from the commissioner a license to engage therein, which license shall expire on the first day of January of each year, except in cases of flock owners, and in those cases the license shall expire twelve (12) months after the last official pullorum test was conducted by the livestock sanitary board.

Licenses will be issued only upon payment to said commissioner of such annual fees as may be fixed by said commissioner for each of the said occupations, not exceeding, however, the amounts herein set forth, to wit: (a) hatcheries—under 50,000 capacity—$10.00; (b) hatcheries—

over 50,000 capacity—$25.00; (c) baby chick and/or poult dealers and salesmen—$5.00; (d) breeders, hatching-egg-producers, the sum of $1.00 up to 200 breeder hens; $2.50 up to 400 breeder hens; $5.00 up to 800 breeder hens; $7.50 up to 1,250 breeder hens; $10.00 over 1,250 breeder hens per year.

History: En. Sec. 5, Ch. 141, L. 1945; amd. Sec. 3, Ch. 46, L. 1957; amd. Sec. 5, Ch. 59, L. 1961.

Collateral References

Licenses⇐16 (1).
53 C.J.S. Licenses § 30.

Cross-Reference

Carrying on business without license, penalty, sec. 94-1511.

3-2206. Repealed—Chapter 46, Laws of 1957.

Repeal

This section (Sec. 6, Ch. 141, L. 1945), relating to the regulation of advertising and selling of poultry, was repealed by Sec. 6, Ch. 46, Laws 1957.

3-2207. Disposition of fees. All fees collected under this act shall be deposited in the state treasury to the credit of the general fund.

History: En. Sec. 7, Ch. 141, L. 1945; amd. Sec. 6, Ch. 59, L. 1961; amd. Sec. 41, Ch. 147, L. 1963.

3-2208. Repealed—Chapter 46, Laws of 1957.

Repeal

This section (Sec. 8, Ch. 141, L. 1945), relating to co-operation with the state livestock sanitary board, was repealed by Sec. 6, Ch. 46, Laws 1957.

3-2209. Products to be labeled. All poultry and products sold or shipped under the authority of this act shall be uniformly labeled with designs prescribed and furnished by the commissioner, provided that all labeling for testing, approval and accreditation as to disease shall be first approved by the Montana livestock sanitary board.

History: En. Sec. 9, Ch. 141, L. 1945; amd. Sec. 4, Ch. 46, L. 1957; amd. Sec. 7, Ch. 59, L. 1961.

3-2210. Certain advertising prohibited. No person, firm, association, partnership or corporation shall use [in] its literature, advertising material or on selling or shipping labels or otherwise the words "tested," "approved," "accredited," or "certified" or words of similar meaning in conjunction with either the word "state" or the word "Montana" or both of them as related to a poultry hatchery or a poultry breeding flock except under the authority of this act.

History: En. Sec. 10, Ch. 141, L. 1945.

3-2211. May cancel certificates. In his discretion the commissioner may cancel any certificate of accreditation or certification issued under his authority. Likewise the secretary and executive officer of the Montana livestock sanitary board may cancel any certificate of testing, approval or accreditation issued under the authority of his board for violation of this act or any rule or regulation adopted hereunder; and any person, firm, association, partnership or corporation who shall violate any provision

of this act or any regulation adopted hereunder shall be guilty of a misdemeanor.

History: En. Sec. 11, Ch. 141, L. 1945; amd. Sec. 8, Ch. 59, L. 1961.

3-2212. Violation a misdemeanor. Violation of any of the provisions of this act shall be a misdemeanor; and as additional or alternative penalties, the commissioner may revoke any license issued, and may by injunction restrain the continuance of any operations covered by this act.

History: En. Sec. 12, Ch. 141, L. 1945; amd. Sec. 5, Ch. 46, L. 1957; amd. Sec. 9, Ch. 59, L. 1961.

CHAPTER 23

EGGS AND EGG DEALERS—LICENSE

Section 3-2301. Egg dealer's license—fee.
3-2302. Remittance of fees.
3-2303. Place for testing and candling eggs to be maintained.
3-2304. "Candling" defined.
3-2305. Certificate of candling.
3-2306. Egg—when defined as unfit for human food.
3-2307. Imported eggs—labeling—use by restaurants, etc.
3-2308. Notice to purchaser of grade of eggs.
3-2309. Invoice to show grade of eggs.
3-2310. Rules and regulations for enforcement of act to be made by commissioner.
3-2311. Penalties.
3-2312. Montana state egg seal.
3-2313. Licensed egg graders.
3-2314. Revocation of license.
3-2315. Disposal of license fees.

3-2301. (2634.1) **Egg dealer's license—fee.** Every person engaged in the business of buying, selling or dealing in eggs, except those persons or firms who do not buy and sell more than an average of 25 cases of eggs per month for any one year, other than those produced by fowls owned by such persons, shall obtain a license from the commissioner of agriculture for each establishment at which said business is conducted, and shall render to the commissioner of agriculture such reports as may be requested by said commissioner. The fee for such license shall be five dollars ($5.00) per year for dealers buying eggs for sale at retail. The fee for such license shall be twenty dollars ($20.00) per year for dealers buying eggs for resale at wholesale. All licenses shall be posted in a conspicuous place in each place of business. Licenses shall expire March 31st each year after the date of issuance.

History: En. Sec. 1, Ch. 189, L. 1931; amd. Sec. 1, Ch. 151, L. 1939; amd. Sec. 4, Ch. 121, L. 1965.

Collateral References
Food⇐3.
36A C.J.S. Food § 12.

3-2302. (2634.2) **Remittance of fees.** All license fees shall be remitted to the department of agriculture, dairy division, who shall deposit them in the state treasury to the credit of the general fund.

History: En. Sec. 2, Ch. 189, L. 1931; amd. Sec. 42, Ch. 147, L. 1963.

3-2303. (2634.3) **Place for testing and candling eggs to be maintained.** Every person engaged in the business of buying eggs intended for human consumption for resale shall maintain an adequate place for the proper candling and handling of same.

History: En. Sec. 3, Ch. 189, L. 1931.

3-2304. (2634.4) **"Candling" defined.** The term "candling" as used in this chapter shall mean the careful examination in a partially dark room or place, of the whole egg by means of a strong light.

History: En. Sec. 4, Ch. 189, L. 1931.

3-2305. (2634.5) **Certificate of candling.** Every person buying eggs for resale at retail, except persons or firms who do not buy and sell more than 25 cases of eggs per month, shall candle all eggs offered to him, which have not been candled by a licensed egg grader; and he shall refuse to buy eggs unfit for human food as defined in section 3-2306. "Rejects" shall be returned to the producer, if possible, or, if requested, the candling shall be done in the presence of the producer. A certificate shall be placed on the top layer of every case of eggs if candled and graded, which should state exact grade and size, also date of candling, by whom candled and license number of licensee. If not candled, or graded, the certificate should state "not candled or graded," the name of the dealer and when packed. Such certificate shall be printed on card or sheets of paper not smaller in size than 2⅜ by 4¼ inches.

History: En. Sec. 5, Ch. 189, L. 1931; amd. Sec. 2, Ch. 151, L. 1939.

3-2306. (2634.6) **Egg—when defined as unfit for human food.** Eggs hereinafter defined shall be deemed unfit for human food:

(a) "Addled," or "white rot" means a egg that is putrid or rotten.

(b) "Moldy" means an egg which, through improper care, has deteriorated so that mold spores have formed within the egg.

(c) "Blood spot" is a spot of blood adhering to the yolk of an egg.

(d) "Black rot" means an egg which has deteriorated to such an extent that the whole interior presents a blackened appearance.

(e) "Blood ring" means an egg in which the germ has developed to such an extent that blood is formed.

(f) "Adherent yolk" means an egg in which the yolk has become fastened to the shell.

(g) "Incubated eggs" shall include eggs which have been subjected to incubation, whether natural or artificial, for more than forty-eight (48) hours, and it shall be unlawful to offer for sale incubated eggs unless branded or stamped with the word "incubated."

(h) "Bloody white" means an egg with a general reddish appearance due to blood mixed through it and which egg may show spots of blood floating in the white.

(i) "Meat spot" means that the egg has a speck of foreign matter adhering to the yolk or floating in the white.

History: En. Sec. 6, Ch. 189, L. 1931; amd. Sec. 3, Ch. 151, L. 1939.

Collateral References

Food⇐15.

36A C.J.S. Food §§ 15, 16.

3-2307. (2634.7) **Imported eggs—labeling—use by restaurants, etc.** All eggs imported into the state of Montana from other states or foreign countries shall be sold as such. All such eggs sold in Montana must comply with the requirements of this act and must be inspected and passed by licensed Montana egg graders. The case or container in which they are shipped shall have the words "foreign eggs" or the word "eggs" preceded by the name of the country or state where produced displayed thereon in letters two inches high. All retailers of said eggs shall sell them from the container in which he received them and shall inform each purchaser that said eggs are foreign eggs. All restaurants, hotels, cafes, bakeries and confectioners using or serving foreign eggs in any form must place a sign in letters not less than four (4) inches in size in some conspicuous place, where the customer entering their place of business can see it, to read "we use foreign eggs," or the same words with the exception that the name of the country or state where the eggs were produced may be substituted for the term "foreign."

History: En. Sec. 7, Ch. 189, L. 1931; amd. Sec. 4, Ch. 151, L. 1939.

3-2308. (2634.8) **Notice to purchaser of grade of eggs.** It shall be unlawful for any person to sell, offer or expose for sale at wholesale or retail any eggs for human consumption, without notifying the person or persons purchasing or intending to purchase the same, of the exact grade or quality and size or weight of such eggs, according to the standards prescribed by the commissioner of agriculture, by stamping or printing on the container of any such eggs, such grade or quality and size or weight, and in the case said eggs are offered for sale in bulk, without also displaying in a conspicuous place at the point where such eggs are offered or exposed for sale, a placard or sign printed in letters two (2) inches high, giving such grade, quality, size and weight and date of grading without placing a Montana state egg seal upon each carton, bag or other container in which eggs are sold, delivered or offered for sale at retail to the consumer. Provided, that this act shall not affect the sale of eggs by the producers when the consumer purchased said eggs at the place of production.

History: En. Sec. 8, Ch. 189, L. 1931; amd. Sec. 5, Ch. 151, L. 1939.

3-2309. (2634.9) **Invoice to show grade of eggs.** Every person other than the producer, except persons or firms who do not sell more than 25 cases of eggs per month, in selling eggs to a retailer shall furnish to such retailer an invoice showing the exact grade or quality of such eggs according to standards prescribed by the commissioner of agriculture.

History: En. Sec. 9, Ch. 189, L. 1931; amd. Sec. 6, Ch. 151, L. 1939.

3-2310. (2634.10) **Rules and regulations for enforcement of act to be made by commissioner.** It shall be the duty of the commissioner of agriculture to enforce the provisions of this act and to make such rules and regulations as may be necessary for the enforcement of this act.

History: En. Sec. 10, Ch. 189, L. 1931.

Collateral References

Agriculture⇐2.
3 C.J.S. Agriculture § 6.

3-2311. (2634.11) **Penalties.** Every person failing to comply with the requirements of this act or any provisions of this act shall be guilty of a misdemeanor and upon conviction for the first offense shall be punished by a fine of not less than twenty-five dollars ($25.00) nor more than seventy-five dollars ($75.00). Upon conviction for the second or any subsequent violation of the foregoing provisions of the act the violator shall be fined not less than fifty dollars ($50.00) nor more than two hundred dollars ($200.00).

History: En. Sec. 11, Ch. 189, L. 1931; amd. Sec. 7, Ch. 151, L. 1939.

3-2312. (2634.12) **Montana state egg seal.** The commissioner of agriculture is hereby authorized and it shall be his duty to provide and make available a suitable seal to be known as the Montana state egg seal; and he shall have the power from time to time to establish the price at which said seal shall be sold, but in no case shall the cost of such seal exceed two dollars ($2.00) per thousand. The proceeds from the sale of said seals shall be expended by the commissioner of agriculture to assist in defraying salaries and expenses incurred in the enforcement of the provisions of this act.

History: En. Sec. 8, Ch. 151, L. 1939; amd. Sec. 1, Ch. 13, L. 1957; amd. Sec. 6, Ch. 121, L. 1965.

3-2313. (2634.13) **Licensed egg graders.** All wholesale and retail dealers who handle more than twenty-five (25) cases of eggs per month supplying eggs to consumers must employ only experienced and licensed graders. The fee for grader's license shall be five dollars ($5.00) per year. All candlers and graders must pass an examination as required by the commissioner of agriculture. The license shall expire March 31st each year after the date of issuance.

History: En. Sec. 9, Ch. 151, L. 1939; amd. Sec. 1, Ch. 88, L. 1953; amd. Sec. 7, Ch. 121, L. 1965.

3-2314. (2634.14) **Revocation of license.** All licenses issued by the department under this act may be revoked by the commissioner of agriculture or his agents in the state of Montana, whenever the holder of such license shall fail to comply with the laws of the state of Montana relative to the conducting of his place of business under such license. If any firm, person or corporation whose license has been so revoked by the commissioner shall thereafter continue to buy, sell or deal in eggs without a license, he shall be deemed guilty of a misdemeanor and shall be subject to the penalties of this act herein provided.

History: En. Sec. 10, Ch. 151, L. 1939.

3-2315. Disposal of license fees. All funds derived from the licenses herein provided and from the sale of the Montana state egg seal shall be paid to the state treasurer and by him credited to the general fund.

History: En. Sec. 11, Ch. 151, L. 1939; amd. Sec. 43, Ch. 147, L. 1963.

CHAPTER 24

DAIRIES AND DAIRY PRODUCTS—REGULATION OF PRODUCTION AND SALE

Section 3-2401. Regulation of dairy industry.
3-2402. Enforcement of standards.
3-2403. Statistics and extension work.
3-2404. Definitions of terms.
3-2405. Sampling and test of dairy products.
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3-2485. Sanitary requirements.
3-2486. Commissioner of agriculture to enforce act and to promulgate rules and regulations.
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3-2401. (2620.1) **Regulation of dairy industry.** The department of agriculture of the state of Montana, through its division of farming and dairying, shall have the general regulation of the industry of dairying in this state, including the regulation and sanitary inspection of all creameries, butter and cheese factories, milk or cream receiving stations, and ice cream factories. The sanitary inspection of dairies, milk plants, condensed milk factories and powdered milk factories shall be administered by the state livestock sanitary board.

History: En. Sec. 1, Ch. 93, L. 1929.

Compiler's Note

The compiler has, pursuant to section 3-101.1, substituted "department of agriculture" for "department of agriculture, labor and industry" in this section.

References

Brackman v. Kruse, 122 M 91, 199 P 2d 971.

Collateral References

Agriculture⇨2; Food⇨1 et seq.

3 C.J.S. Agriculture § 6; 36A C.J.S. Food §§ 5-9.

Constitutionality of regulations as to milk. 18 ALR 235; 42 ALR 556; 58 ALR 672; 80 ALR 1225; 101 ALR 64; 110 ALR 644; 119 ALR 243 and 155 ALR 1383.

Construction and application of regulations as to milk. 122 ALR 1062.

Validity of municipal ordinance imposing requirements on outside producers of milk to be sold in city. 14 ALR 2d 103.

3-2402. (2620.2) **Enforcement of standards.** The department of agriculture shall enforce the laws of the state regulating the standards of all dairy products, except whole milk, skimmed milk, condensed or evaporated milk, whether made from whole milk or skimmed milk. The regulation of said standards above excepted shall be the duty of the livestock sanitary board.

History: En. Sec. 2, Ch. 93, L. 1929.

Compiler's Note

The compiler has, pursuant to section 3-101.1, substituted "department of agriculture" for "department of agriculture, labor and industry" in this section.

References

Brackman v. Kruse, 122 M 91, 199 P 2d 971.

3-2403. (2620.3) **Statistics and extension work.** It shall be the duty of the department of agriculture to compile and publish statistics concerning all phases of the dairy industry in the state and to encourage and advertise said industry in every possible manner. Said department shall carry on a campaign of education in conjunction with the extension work of the college of agriculture and mechanic arts for the purpose of encouraging interest in the dairy industry and of furnishing scientific and practical information concerning the same.

History: En. Sec. 3, Ch. 93, L. 1929.

Compiler's Note

The compiler has, pursuant to section 3-101.1, substituted "department of agriculture" for "department of agriculture, labor and industry" in this section.

3-2404. (2620.4) **Definitions of terms.** For the purpose of this act, the following definitions are hereby adopted:

1. Butter is the clean, nonrancid product made by gathering in any manner, the fat of fresh ripened milk or cream into a mass which also contains a small portion of the other milk constituents, with or without salt, and must contain not less than eighty per centum of milk fat. No tolerance for any deficiency in milk fat shall be permitted. Butter may also contain added coloring matter.

2. Renovated butter or process butter is the product made by melting and reworking, without the addition or use of chemicals or any substances except whole milk, cream or salt, and must contain not less than eighty per centum of milk fat.

3. Cheese is the sound, solid, and ripened product made from milk or cream by coagulating the casein thereof with rennet or lactic acid, with or without the addition of ripening ferments and seasoning, and must contain in the water free substance, not less than fifty per centum of milk fat, and not more than thirty-nine per centum of moisture. Cheese may also contain added coloring matter.

4. Skimmed milk cheese is the sound, solid and ripened product made from skim milk by coagulating the casein thereof with rennet or lactic acid, with or without the addition of ripening ferments and seasoning.

5. Ice cream is a frozen product made with pure, sweet milk, cream, skim milk, evaporated or condensed milk, evaporated or condensed skim milk, dry milk, dry skim milk, pure milk fat, or wholesome sweet butter, or any combination of any such products, with or without sweetening, clean wholesome eggs or egg products, and with or without the use of harmless flavoring and coloring. Ice cream must contain not less than ten per centum of milk fat, not less than thirty-three per centum total solids, and may or may not contain pure and harmless edible stabilizer. Ice cream may contain not to exceed one per centum gelatin. No frozen milk or milk product shall be manufactured or sold unless it contains at least ten per centum butterfat, excepting sherbets and ices and other exceptions shown in this same section. All ice cream must be manufactured from pasteurized ice cream mix.

6. Fruit ice cream shall conform to the requirements of ice cream, except that the fruit ingredients must be from sound, clean and mature fruit, and it must contain not less than nine per centum of milk fat.

7. French ice cream, French custard ice cream, cooked ice cream, ice custard, parfaits and all similar frozen products, excepting sherbets and water ices, are varieties of ice cream.

8. Ice cream mix is a pasteurized, unfrozen product used in the manufacture of ice cream and must comply with all the requirements for ice cream as set forth herein.

9. Milk sherbet means the pure, clean, frozen product made from milk product, water and sugar, with harmless fruit or fruit juice flavoring and with or without harmless coloring, which must contain not less than 0.35 of one per centum of acid, as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome edible material. It must contain not less than four per centum by weight of solids.

10. Ice or ice sherbet means the pure, clean, frozen product made from water and sugar with harmless fruit or fruit juice flavoring, and with or without harmless coloring, and must not contain less than 0.35 of one per centum of acid, as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome edible material. It must contain no milk solids.

11. Creamery. A creamery is a place where the milk or cream furnished by three or more persons is used for the manufacture into butter for commercial purposes.

12. Cheese factory. A cheese factory is a place where milk furnished by three or more persons is made into cheese for commercial purposes.

13. Ice cream factory. An ice cream factory is a place where ice cream mix is frozen into ice cream for commercial purposes.

14. Ice cream mix factory. An ice cream mix factory is any place where ice cream mix is made.

15. Milk or cream buying or collecting station. A milk or cream buying or collecting station is any place where milk or cream is bought or collected for shipment or delivery to a creamery or to any person intending to make use of the same for commercial purposes.

16. Person. The term "person" as used herein shall include all persons, whether natural or artificial, including firms, copartnerships, corporations and marketing associations of every description.

17. Department. The term "department" as hereinafter used shall, unless otherwise indicated, refer to the department of agriculture of the state of Montana.

It shall be unlawful for any person, firm or corporation by himself, his or its servant or agent, to manufacture, sell, expose or offer for sale or exchange any butter or other substance or commodity defined in this act containing a less quantity of butterfat or other ingredient than herein required. Any such violator shall be deemed guilty of a misdemeanor and shall be punished according to the provisions of section 3-2460.

History: En. Sec. 4, Ch. 93, L. 1929; amd. Sec. 1, Ch. 39, L. 1931; amd. Sec. 1, Ch. 68, L. 1937.

Compiler's Notes

The compiler has, pursuant to section 3-101.1, substituted "department of agri-

culture" for "department of agriculture, labor and industry" in this section.

This section in so far as it relates to ice cream products is superseded by ch. 172, Laws 1953. See sec. 3-2485.

Collateral References

Food⇐2.
36A C.J.S. Food § 1 et seq.

3-2405. (2620.5) **Sampling and test of dairy products.** It shall be the duty of the department to provide suitable means for the taking of samples of all dairy products and of all imitations thereof.

Said department shall have the authority and it shall be its duty to take such samples from any person engaged in the handling, manufacture or sale of dairy products or imitations thereof, but the agent of the department taking the same must at the time of such taking, pay or offer to pay for them at their full value, and if payment is accepted, such agent must take a receipt for the same from the person from whom the samples are obtained.

History: En. Sec. 5, Ch. 93, L. 1929.

References

Brackman v. Kruse, 122 M 91, 199 P 2d 971.

Collateral References

Food⇐3.
36A C.J.S. Food § 13.

3-2406. (2620.6) **Test of samples—rules of evidence.** The department may require a chemist from the state board of health to test and analyze samples of dairy products taken by it. All such samples and the record of their analysis or test, when identified as to the sample of the record thereof by the oath of the officer taking the same, or when verified as to the analysis or test by the oath of the chemist making the same, shall be admissible in evidence in any court of this state or in any prosecution for the violation of this act or for the violation of any rule or regulation of the department as prima facie evidence of the facts disclosed thereby.

History: En. Sec. 6, Ch. 93, L. 1929.

3-2407. (2620.7) **Keeping of samples.** All persons purchasing milk or cream, for manufacture, sale or shipment, and paying for the same on the basis of the butterfat contained therein as determined by the Babcock test, shall immediately upon receiving such milk or cream, take a representative sample thereof. Such samples shall not be less than two (2) ounces avoirdupois in weight and shall be immediately transferred to a clean and dry sample jar and properly sealed to prevent evaporation or the escape of any of the contents thereof. All samples taken shall be plainly marked or labeled and such mark or label shall be entered on the records of the purchaser to correspond with the name of the person from whom the purchase was made and such record shall also show the weight of the milk or cream. Such samples shall then be protected from the extremes of heat and cold until five (5) o'clock P.M. of the following day, unless the next day be Sunday or any other holiday in which event the samples shall be held until five (5) o'clock P.M. of the next day following such holiday. During the period that samples are so held, after the making of the test by the person taking same, they shall be opened only in the presence of the commissioner of agriculture, or his authorized agent. Nothing in this section shall prohibit the weighing and sampling of milk from

farm bulk milk tanks, or the use of composite samples of milk according to rules and regulations adopted by the commissioner of agriculture, in the best interests of milk producers, consumers and processors and for the protection of their mutual interests.

History: En. Sec. 7, Ch. 93, L. 1929; amd. Sec. 1, Ch. 45, L. 1961.

3-2408. (2620.8) **Licensing all persons collecting on milk or cream routes.** No person shall hereafter engage in collecting milk or cream upon any established milk or cream route, for any creamery, cheese factory or milk or cream buying or receiving station, without first procuring a license from the department of agriculture.

A fee of five dollars ($5.00) shall be charged for each such license and for each annual renewal thereof. All such licenses shall expire on the 31st day of December of each year.

History: En. Sec. 8, Ch. 93, L. 1929.

Compiler's Note

The compiler has, pursuant to section 3-101.1, substituted "department of agriculture" for "department of agriculture, labor and industry" in this section.

Collateral References

Food⇐3.
36A C.J.S. Food § 12.

3-2409. (2620.9) **Regulation of persons collecting milk and cream.** It shall hereafter be unlawful for any person regularly engaged in collecting milk or cream upon any established milk or cream route for any creamery, ice cream factory, cheese factory or milk or cream buying or receiving station, to sample such milk or cream for the purpose of testing for butterfat, or to transfer such milk or cream from one (1) can or container to another while in transit, except in a creamery or in a room equipped in conformity with the requirements of this act governing creameries or cream buying or receiving stations. Collection of cream on all cream routes shall be made at least every four (4) days.

History: En. Sec. 9, Ch. 93, L. 1929; amd. Sec. 2, Ch. 39, L. 1931.

Collateral References

Food⇐5.
36A C.J.S. Food § 15.

35 Am. Jur. 2d 852, Food, § 59.

Construction of statute or ordinance in relation to containers. 35 ALR 782.

Construction and application of regulations as to milk containers. 122 ALR 1062.

3-2410. (2620.10) **Babcock test — license and operation.** The Babcock test is hereby adopted as the official dairy test for use in the state of Montana. No person shall operate the Babcock test in any creamery, cheese factory, or other place where milk or cream is bought and paid for on the basis of its fat content without first passing the examination and securing the license hereinafter provided for. Any person desiring to operate the Babcock test at any of the places enumerated in this section, shall apply to the department of agriculture for permission to take the Babcock test operator's examination. Such examination shall be given to the applicant by the chief of the dairy division of the department, or his representative. Upon passing said examination to the satisfaction of the examining official, the applicant shall be issued a license authorizing him to operate the Babcock test in the state of Montana for a period of one year. A fee of five dollars ($5.00) shall be paid for each such original li-

cense and a fee of three dollars ($3.00) for each renewal thereof. All such licenses shall expire on December 31st of each year.

History: En. Sec. 10, Ch. 93, L. 1929; amd. Sec. 2, Ch. 121, L. 1965.

3-101.1, substituted "department of agriculture" for "department of agriculture, labor and industry" in this section.

Compiler's Note

The compiler has, pursuant to section

3-2411. (2620.11) **Temporary permit to operate Babcock test.** Any person who shall desire an immediate license to operate the Babcock test before it is reasonably convenient for the department to give the examination provided for in the preceding section, may apply to the department for a temporary permit to operate the Babcock test, stating in his application what training or experience he has had in the use or operation of the same. The department may thereupon in its discretion issue to the applicant a temporary permit to operate the Babcock test, which shall entitle the holder to operate said test pending the giving of the examination prescribed in the preceding section. Application for such temporary permit shall be accompanied with a fee of five dollars ($5.00) which shall pay for the first regular Babcock test operator's license thereafter issued to such applicant. If applicant fails in his examination, or discontinues operation of Babcock test before examination can be given, he forfeits fee of five dollars ($5.00) paid for such license.

History: En. Sec. 11, Ch. 93, L. 1929; amd. Sec. 1, Ch. 121, L. 1965.

3-2412. (2620.12) **Existing licenses continued.** All Babcock test operator's licenses issued by the department before the effective date of this act shall remain in force and effect until December 31st, 1929, after which the holders thereof shall be required to procure licenses under the terms of this act.

History: En. Sec. 12, Ch. 93, L. 1929.

3-2413. (2620.13) **Babcock test—revocation of license.** The commissioner of agriculture is hereby authorized and empowered to revoke the license of any Babcock test operator for failure to comply with the provisions of this act or with any of the rules, or regulations of the department relating to said test. Any person who shall operate the Babcock test in any of the places specified in this act without first having the license required by this act, or who shall operate said test after the revocation of said license, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars ($25.00) and not more than five hundred dollars ($500.00), or by imprisonment in the county jail for not more than thirty days (30) or by both such fine and imprisonment.

History: En. Sec. 13, Ch. 93, L. 1929.

3-101.1, substituted "commissioner of agriculture" for "commissioner of agriculture, labor and industry" in this section.

Compiler's Note

The compiler has, pursuant to section

3-2414. (2620.14) **Babcock test—method of operation.** The following is the method which shall be adopted as the standard for the operation of the Babcock test for the state of Montana and shall be used by persons,

firms, or corporations paying for milk or cream on the basis of the butterfat content of such commodity or commodities.

TESTING MILK. The milk from which the sample to be tested is taken shall be thoroughly mixed by pouring from one vessel to another three (3) times. The sample to be tested shall consist of eighteen (18) grams by weight or seventeen and six-tenths (17-6/10) cubic centimeters, as measured in a standard pipette. The standard strength of the acid used for all testing of milk or cream shall be indicated by the specific gravity, which shall not be less than one and eighty-two hundredths, (1-82/100) nor more than one and eighty-three hundredths, (1-83/100) as determined by a standard hydrometer. After properly mixing the sample of milk and acid in the test bottle, centrifuging shall be for periods of five (5) minutes, two (2) minutes, and one (1) minute. After the first period of centrifuging, water shall be added, sufficient to fill the test bottle up to the base of the neck and after the second centrifuging, water shall be added sufficient to raise the fat in the neck of the test bottle to near the top of the graduation. The water used to fill the test bottles shall be at a temperature of one hundred and forty degrees (140°) Fahrenheit or more. After the last period of centrifuging, the test bottle shall be immersed in a bath prepared for the purpose, which shall consist of water at not less than one hundred and thirty degrees (130°) nor more than one hundred and forty degrees (140°) Fahrenheit, and they shall remain immersed for at least ten (10) minutes, and the temperature of the bath shall be kept between the temperature before named for the full period of immersion. The test shall be read immediately after the test bottles are taken from the bath. Dividers shall be used to determine the length of the fat column in the neck of the test bottles. The reading shall be from the bottom of the lower meniscus to the top of the upper meniscus of the fat column.

TESTING CREAM. The method of testing cream shall be the same as for milk, except that all samples of cream tested shall be weighed by either the nine (9) or eighteen (18) gram method, and the reading of the fat column in the neck of the test bottle shall be from the bottom of the lower meniscus to the bottom of the upper meniscus. Glymol must be used to destroy the upper meniscus, and must be added just before reading, and the reading shall be from the bottom of the lower meniscus to the bottom of the glymol on the top of the fat column.

History: En. Sec. 14, Ch. 93, L. 1929.

3-2415. (2620.15) **Registration of location of dairy product factories.** No person shall operate any creamery, cheese factory, ice cream factory or milk or cream buying or collecting station or any other manufactory or establishment for the making or shipment of dairy products, without first registering the location of his place of business, and the name of the owner or manager, with the commissioner of agriculture, on or before the first (1st) day of April each year. Failure to comply with the requirements of this section shall constitute a misdemeanor and shall subject the offender to the penalties provided by the general law of the state for the punishment of misdemeanor.

History: En. Sec. 15, Ch. 93, L. 1929.

3-2416. (2620.16) **Licensing of dairy product plants.** It shall be unlawful for any person to operate or carry on any creamery, butter factory, cheese factory or ice cream factory without first securing a license from the department, which license shall expire on the 31st day of December of the year in which it is issued. All licenses which heretofore have been issued by the department to any of the establishments named in this and the following section, shall remain in force until their expiration, and the holder thereof shall not be required to procure a new license under the terms of this act until the expiration or revocation of such former license. The following schedule of license fees shall be charged by the department for all licenses issued under this section:

Creameries and cheese factories manufacturing one hundred thousand pounds (100,000 lbs.) or less of product a year, twenty dollars ($20.00). An addition of five dollars ($5.00) shall be made to the fee for any such license for each one hundred thousand pounds (100,000 lbs.) or any fraction thereof annually produced in excess of the first one hundred thousand pounds (100,000 lbs.).

Ice cream factories manufacturing one thousand (1,000) gallons or less of product a year, ten dollars ($10.00). Those producing more than one thousand (1,000) gallons and less than ten thousand (10,000) gallons of product a year, twenty dollars ($20.00). An addition of five dollars ($5.00) shall be made to the fee for any such license for each ten thousand (10,000) gallons or fraction thereof annually produced in excess of the first ten thousand (10,000) gallons.

The total year's production of the applicant for a year immediately preceding the application for a license shall determine the amount of any license required by this section; providing that where no past production record is available, the license to be paid shall be determined by the commissioner of agriculture.

History: En. Sec. 16, Ch. 93, L. 1929; amd. Sec. 1, Ch. 134, L. 1953.

Cross-Reference

Licensing of dairies and milk plants, sec. 46-232.

Collateral References

Food⇐3.
36A C.J.S. Food § 12.
35 Am. Jur. 2d 849, Food, § 54.

3-2417. (2620.17) **Licensing of milk and cream buying stations.** It shall be unlawful for any person to operate or carry on any milk or cream buying or collection station without first securing from the department an annual license to do so, which said license shall expire on the 31st day of December of each year.

The following schedule of fees shall be charged by the department for all such licenses:

All stations handling less than three thousand pounds (3,000 lbs.) ten dollars ($10.00); all stations handling three thousand pounds (3,000 lbs.) or over per month and less than six thousand pounds (6,000 lbs.) fifteen dollars ($15.00); all stations handling six thousand pounds (6,000 lbs.) or more per month, twenty dollars ($20.00). In computing the annual license to be paid under this section, the highest month's business of such station during the year immediately preceding the application for such license shall determine the amount of the fee.

History: En. Sec. 17, Ch. 93, L. 1929; amd. Sec. 5, Ch. 121, L. 1965.

Collateral References
35 Am. Jur. 2d 850, Food, § 55.

3-2418. (2620.18) **Licenses—revocation.** All licenses issued by the department under this act may be revoked by the commissioner of agriculture of the state whenever the holder of such license shall fail to comply with the laws of the state of Montana relative to the conducting of his place of business under such license or whenever he shall fail to conduct said establishment in an orderly or sanitary manner. If any person whose license has been so revoked by the commissioner shall thereafter continue to conduct or carry on said place of business without a license, he shall be deemed guilty of a misdemeanor and shall be subject to the penalties in this act hereinafter provided.

History: En. Sec. 18, Ch. 93, L. 1929.

Compiler's Note
The compiler has, pursuant to section 3-101.1, substituted "commissioner of agriculture" for "commissioner of agriculture, labor and industry" in this section.

Collateral References
35 Am. Jur. 2d 851, Food, § 57.

3-2419. (2620.19) **Reports of factories.** It shall be the duty of every person operating a creamery, cheese factory, ice cream factory, or milk or cream buying or receiving station in this state, to render to the department once a month and not later than the tenth day of each month, a full report of the amount of butter, cheese, ice cream or other dairy products handled or manufactured during the preceding month. Any person failing to render the report required by this section or failing to make said report when the same is due, shall be guilty of a misdemeanor and subject to the penalties hereinafter provided for the violation of the provisions of this act.

History: En. Sec. 19, Ch. 93, L. 1929.

Collateral References
Food⊂⇒2.
36A C.J.S. Food §§ 3, 10.

3-2420. (2620.20) **Location and construction of creameries, cheese factories, ice cream factories and ice cream mix factories.** The location and construction of creameries, cheese factories and ice cream mix factories shall be subject to the following regulations:

(a) They shall not be located within 200 feet of any hog pen or corral.

(b) The buildings and equipment of all creameries, cheese factories, ice cream factories and ice cream mix factories must be of such character that the dairy products manufactured or kept therein shall be preserved in first class, sanitary condition.

(c) Meat or other products must not be stored in the same room or cabinet with dairy products if it can be shown that any of the dairy products kept in such room or cabinet are contaminated by the inclusion of any other product in same room or cabinet.

(d) Creameries, cheese factories and ice cream mix factories shall be equipped with a steam boiler large enough to furnish sufficient steam and boiling water to thoroughly wash and sterilize all equipment and utensils and to thoroughly pasteurize all milk and milk products.

(e) All ice cream factories shall have available sufficient steam or hot water to thoroughly wash and sterilize all equipment and utensils.

(f) The floors of the part of the factories where butter, cheese or ice cream mix are manufactured and stored must be of concrete and so constructed that they can be thoroughly washed and drained.

(g) The floors of the part of the factories where ice cream is manufactured or stored must be waterproof and of a material that can be thoroughly washed and cleaned; the walls and ceilings of such room shall be of a suitable impervious material which shall be smooth and tight, clean and cleanable; the ceiling of such room shall not be less than eight feet from floor. The ice cream freezing equipment shall be installed in such a way that it shall not be subject to undue contamination by dirt, dust, flies or handling by customers; such room shall not be used as a place of habitation or as sleeping quarters.

(h) All butter, cheese, ice cream mix and ice cream factories must be equipped with a can washer or double compartment sink and must be connected with the sewer or pipe which will convey the waste water underground to a point not less than fifty feet from the building.

(i) Whenever ice cream freezing equipment is installed in a room which is a drug, confectionery or other food or drink establishment, to which the public has access, such equipment shall be installed in a sanitary manner to be approved by the commissioner of agriculture or his agents and thereafter shall be kept and maintained in a sanitary condition.

(j) All butter, cheese, ice cream and ice cream mix factories must be well ventilated and must be provided with windows containing at least ten square feet of glass for each one hundred feet of floor space, or other approved lighting system. Between May 1st and November 1st of each year screen doors shall be provided and used on all outside doorways. During said time screens shall be provided and used on all open windows.

History: En. Sec. 20, Ch. 93, L. 1929; amd. Sec. 2, Ch. 68, L. 1937.

Collateral References

Food⇐5.

36A C.J.S. Food § 15.

3-2421. (2620.21) **Preliminary permit to operate new enterprise.** Whenever any person shall desire to commence the operation of a creamery, cheese factory, ice cream factory or milk or cream buying or receiving station, he shall give notice of such intention to the department before starting such enterprise, accompanied by a general statement as to the nature and equipment of the proposed plant. The department shall investigate such proposed enterprise and if satisfied that the same is or will be operated in compliance with the requirements of law and the rules of the department relative to the same, shall grant the applicant a permit to carry on the same. No person shall commence any such operations without such permit. A violation of the provisions of this section shall be a misdemeanor and shall be punishable by a fine of not less than ten dollars ($10.00) nor more than five hundred dollars ($500.00).

History: En. Sec. 21, Ch. 93, L. 1929.

3-2422. (2620.22) **Regulation of milk and cream stations.** On and after the effective date of this act the following regulations shall apply to all stations within the state of Montana where milk or cream is bought or collected for shipment or sale:

The room in which any such station is operated shall contain floor space enough for all necessary equipment in said station, including a cooling tank of sufficient size to hold all cream bought or collected at such station on each day, or other adequate cooling system approved by the department of agriculture.

All such stations shall be equipped with a steam boiler of sufficient capacity to furnish enough steam to thoroughly sterilize all milk and cream cans received at such station. No stove or heating apparatus other than a steam boiler shall be used to heat water with which to cleanse utensils used in any cream station. The provisions of this section, however, shall not apply to forwarding stations in which no testing for butterfat is made.

History: En. Sec. 22, Ch. 93, L. 1929; amd. Sec. 3, Ch. 39, L. 1931.

Collateral References

35 Am. Jur. 2d 852, Food, § 59.

Construction of statute or ordinance in relation to containers. 35 ALR 782.

Construction and application of regulations as to milk containers. 122 ALR 1062.

3-2423. (2620.23) **Regulation of cheese factories.** All cheese factories must be equipped with sanitary whey tanks which shall be built upon a cement base or floor and shall be elevated a sufficient distance above the floor to permit a wagon or truck driving alongside or underneath the same for the purpose of filling by gravity. Whey tanks must be located not less than fifty (50) feet from the factory and must be equipped with a steam or hot water pipe for use in pasteurization. All whey shall be pasteurized and the tank shall be properly cleaned after use. All whey delivered to any person must be pasteurized at a temperature of not less than one hundred and forty-five degrees (145°) Fahrenheit and held for thirty (30) minutes.

History: En. Sec. 23, Ch. 93, L. 1929.

3-2424. (2620.24) **Location and construction of milk and cream buying and receiving stations.** All milk and cream buying and receiving stations shall be located on well drained ground at least fifty (50) feet from any outside contaminating influence. If within a building where any other business is conducted it shall be separated from the other rooms of the building by a tight wall or walls and if there is an opening for passage between the room used as the station and the rest of the building, there shall be two doors, one at each end of a vestibule or entry which shall be at least six feet in length. The doors shall be of wood, or wood and glass, and sufficient to keep all odors or dust from entering the station from any other part of the building. No station for the purpose of purchasing, storing, or handling milk or cream shall be situated inside of, nor within fifty feet of any blacksmith shop, garage, grain elevator, livery stable, or any other building, corral, hog pen, or other place which can be denominated a contaminating influence; nor shall any oil, gasoline, or any other liquid or substance of a contaminating nature be kept within fifty feet of such station. The room used, shall not be used for any purpose other than a milk or cream receiving station and shall at no time contain anything except milk or cream received there, the cans or other receptacles in

which it is shipped, and such furniture and equipment as may be necessary to efficiently conduct the business of such station. No gasoline engine shall be used or kept inside the room where the milk or cream is stored or kept. The engine or boiler shall be kept in a room partitioned off from the room where the milk or cream is stored or kept. A sanitary sink or tank with suitable drain shall be provided, in which to wash cans and other utensils used in conducting the business of the station, and a waste jar in which to empty the contents of the test bottles after the testing has been completed shall also be used. Dogs, cats, or other animals shall not be permitted to enter the room where the milk or cream is stored, and pieces of screen secured by hoops or other devices, shall be used on the tops of the cans containing milk or cream while in storage, to prevent mice, insects or dirt from falling in. The floor of the room where the milk or cream is kept or stored, shall be of cement or concrete, with a drain which shall be connected with a sewer, or with a pipe which shall convey the waste water underground to a point not less than fifty feet from the station. It shall be provided with windows containing at least ten square feet of glass for each hundred square feet of floor space. Between May 1st and November 1st of each year, screen doors shall be provided and in use on all outside doorways, and during that time screens shall be on all windows in the room. There shall be provided a cooling tank, large enough to hold all of the cream or milk received or stored, and in which there shall be at all times an amount of cold running water, or ice water, sufficient to thoroughly cool all milk or cream stored there. There shall be provided a steam boiler large enough to furnish sufficient steam to thoroughly sterlize cans; and all cans in which milk or cream is received shall be thoroughly washed in clean water with a sterilizing or cleansing powder added, and either sterilized with live steam or scalded with boiling water before being returned to the patron. A rack shall be provided on which cans not immediately returned to the patron shall be inverted for the purpose of drying and airing, after being sterilized by steaming and scalding.

History: En. Sec. 24, Ch. 93, L. 1929.

3-2425. (2620.25) **Sanitary control of dairy products.** Acting upon the report of an inspector, the commissioner of agriculture or his authorized agent, may order any creamery, ice cream factory, cheese factory, or cream station found to be not kept in a sanitary condition, to be closed; and it shall be closed forthwith and kept closed until such time as the department shall find that the sanitary conditions of such creamery, ice cream factory, cheese factory or cream station, are satisfactory. Any person or persons operating any creamery, ice cream factory, cheese factory, or cream station, before receiving notice from the commissioner of agriculture, or his authorized agent to open the same, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than twenty-five dollars, nor more than two hundred and fifty dollars, or by imprisonment in the county jail for not less than ten days, nor more than thirty days, or by both such fine and imprisonment. In addition to such fine or imprisonment, any person or persons operating any creamery, ice cream factory, cheese factory, or cream station after receiving notice from the commis-

sioner of agriculture, or his authorized agent, to close the same, and before receiving notice from the commissioner of agriculture, or his authorized agent, permitting opening of the same, shall pay an additional fine of twenty-five dollars for each day such creamery, ice cream factory, cheese factory or cream station is illegally operated. The commissioner of agriculture or any of his authorized agents shall have the right to enter any creamery, dairy, barn or farm building, factory, building, store, receiving station, railroad depot, express office or other place where dairy products, or substitutes therefor, are produced, manufactured, sold or kept in storage or while in transit from one place to another, for the purpose of inspection of such dairy products or substitutes for the same, or to obtain samples of the same for testing or analysis. It is expressly provided that such products shall include all butter, cheese, ice cream, and other dairy products, all substitutes for dairy products and all substances made in imitation of the same, except whole milk, skimmed milk, evaporated or condensed milk or powdered milk or any product of which the word "milk" either alone or in connection with any other word or words is used to designate the same, or any liquid or substances made or sold or offered for sale as a substitute for, or made in imitation of the same.

History: En. Sec. 25, Ch. 93, L. 1929.

References

Brackman v. Kruse, 122 M 91, 199 P 2d 971.

Collateral References

Food⊂⊃2.
36A C.J.S. Food § 3.
35 Am. Jur. 2d 852, Food, § 59.

3-2426. (2620.26) **Certain persons must assist commissioner.** All clerks, bookkeepers, express agents, railroad officials, employees or employees of common carriers, shall render to the dairy department and his deputies all the assistance in their power in tracing, finding or discovering the presence in any depot, baggage or express car, warehouse or elsewhere, in the custody of such carrier, of any article or commodity mentioned in this law. Refusal or willful neglect on the part of any of the persons hereinabove named to render such assistance, shall be a misdemeanor and shall be punishable by a fine of not less than twenty-five dollars ($25.00), nor more than one hundred dollars ($100.00), or by imprisonment in the county jail for not less than one (1) month nor more than six (6) months, or by both such fine and imprisonment.

History: En. Sec. 25A, Ch. 93, L. 1929 by Sec. 4, Ch. 39, L. 1931.

Cross-Reference

Divisions of department of agriculture, sec. 3-109.

3-2427. (2620.27) **Books of certain factories to be kept open.** Operators of all co-operative butter, cheese, and condensed milk factories shall keep their books open for inspection of any patron at all times, showing the daily amounts of milk and cream received, and the per cent and amount of fat in the milk and cream received from each patron, and the amounts of cream sold, and butter, cheese, or condensed milk manufactured daily. Every facility shall be offered to the patron for keeping himself informed in regard to the business of the butter, cheese and condensed milk factory, and checking up his daily product with his return.

History: En. Sec. 26, Ch. 93, L. 1929.

3-2428. (2620.28) **Checks issued for milk or cream—contents of stub—copy.** All checks issued by any person, (as the word "person" is defined in this act), for milk or cream, shall carry a stub, containing the name of the purchaser, the date of receipt, the weight and test of milk or cream, the number of pounds of milk fat, the price per pound, and the grade of cream or milk. The same number on the stub shall appear on the corresponding check and a carbon copy of both check and stub or ledger reference must be kept at the point of purchase in the state of Montana.

History: En. Sec. 26A, Ch. 93, L. 1929 by Sec. 5, Ch. 39, L. 1931.

Collateral References
Food⇐2.
36A C.J.S. Food §§ 3, 10.

3-2429. (2620.29) **Marking weight on cheese containers required.** All cheese offered or exposed for sale, when placed in packages, jars or other containers, in the state of Montana, shall be full marked weight and each package, jar or other container shall have the net weight marked thereon by the manufacturer, which weight shall be exclusive of the package, jar or other container.

History: En. Sec. 26B, Ch. 93, L. 1929 by Sec. 6, Ch. 39, L. 1931.

3-2430. (2620.30) **Sanitary regulation of foreign dairy products.** All milk, butter, cheese, condensed milk, ice cream or other dairy products shipped into Montana for sale or use must be produced under the same sanitary regulations and requirements as those governing the production of the same in this state. The commissioner of agriculture shall have the authority to require a sworn statement from any persons shipping dairy products into the state of Montana as to the sanitary conditions under which the same were produced and unless such products are shown to have been produced under similar or equivalent sanitary conditions to those required by the laws of this state, they shall not be sold, given away, transported or used in the state of Montana.

History: En. Sec. 27, Ch. 93, L. 1929.

3-2431. (2620.31) **Regulation of use and loaning of containers.** Every person, delivering milk, cream or ice cream to any other person in cans or other containers shall keep such cans or other containers at all times free from filth, rust or other deleterious substance and in a clean and wholesome condition for holding such content.

Every person receiving milk, cream, or ice cream at the place of destination in cans or other containers which are to be returned to the shipper or seller, shall cause such cans or other containers to be thoroughly cleansed and immediately returned after being emptied. The term "place of destination" as used in this section shall include both the final consignee of any milk, cream or ice cream, and also any receiving station or other agent or handler by whom such commodity is transferred from the original containers thereof.

No creamery, cheese factory, ice cream factory or other dairy enterprise shall furnish their patrons with cans for the use of such patrons in bringing milk or cream to such creamery, factory, or plant. A violation of

the provisions of this section shall be a misdemeanor and punishable as hereinafter provided.

History: **En. Sec. 28, Ch. 93, L. 1929.**

Collateral References

35 Am. Jur. 2d 852, Food, § 59.

3-2432. (2620.32) **Standard measures for dairy products.** The standard measure, or capacity for milk shall be the gallon containing two hundred thirty-one cubic inches, the half gallon shall contain one hundred fifty and five-tenths cubic inches, and the quart one-fourth as much as the gallon, and the pint one-half as much as the quart.

History: **En. Sec. 29, Ch. 93, L. 1929.**

Collateral References

Weights and Measures⇐5.

94 C.J.S. Weights and Measures §§ 2, 4.

Validity of statute or ordinance requiring commodities to be sold in a specified quantity or weight. 6 ALR 429 and 90 ALR 1290.

3-2433. (2620.33) **Standard butter measure.** The standard measure for the sale of butter, in the state of Montana, shall be sixteen (16) ounces, (avoirdupois weight) to the pound, exclusive of the wrapper or container, no tolerance in deficiency being allowed. All butter sold, offered or exposed for sale in paper containers or wrappers, shall be in packages of one (1) or two (2) pounds, net standard avoirdupois weight, no tolerance for deficiency being allowed; provided, however, that packages of the weight herein specified may be made up of smaller component packages of wrapped butter in multiples of four (4) or eight (8) ounces each. Any violation of the provisions of this section shall constitute a misdemeanor and be punishable as provided in section 3-2454.

History: **En. Sec. 30, Ch. 93, L. 1929; amd. Sec. 7, Ch. 39, L. 1931; amd. Sec. 1, Ch. 168, L. 1933.**

3-2434. (2620.34) **Names to appear on package.** All creamery butter sold, offered or exposed for sale at retail in the state of Montana, wherever manufactured, must be wrapped in parchment paper and must have the wholesaler's or manufacturer's name clearly printed in a conspicuous place on the outside of the package in which it is sold. On each pound package of butter so sold or offered for sale the words "16 ounces net weight" or "1 lb. net weight" shall appear.

History: **En. Sec. 31, Ch. 93, L. 1929; amd. Sec. 3, Ch. 68, L. 1937.**

Collateral References

35 Am. Jur. 2d 856, Food, § 62.

3-2435. (2620.35) **Repealed—Chapter 99, Laws of 1953.**

Repeal

This section (Sec. 32, Ch. 93, L. 1929), relating to the regulation of imitation butter, was repealed by Sec. 9, Ch. 99, Laws 1953.

3-2436. (2620.36) **Use of extraneous fats forbidden.** No person shall manufacture, mix or compound with or add to natural milk, cream, or butter any animal fats or animal or vegetable oils, nor make nor manufacture, any oleaginous substance not produced from milk or cream, with the intent to sell the same as butter or cheese made from unadulterated milk or cream, or have the same in his possession with such intent; nor shall any

person solicit orders for same or offer for sale, nor shall any such article or substance or compound so made or produced be sold as or for butter or cheese, the product of the dairy.

History: En. Sec. 33, Ch. 93, L. 1929.

2 C.J.S. Adulteration §§ 5-10; 36A C.J.S. Food § 17.

Collateral References

Adulteration⇐4; Food⇐7.

3-2437. (2620.37) **Use of certain products in state institutions prohibited.** No renovated butter, and no condensed milk from which the butterfat has been removed, and a vegetable or other oil has been substituted therefor, shall be used in any of the educational, charitable, hospital, medical, reformatory or penal institutions maintained by the state of Montana, or which receives from the state of Montana any money, appropriation or financial assistance, whatsoever.

History: En. Sec. 33A, Ch. 93, L. 1929 by Sec. 8, Ch. 39, L. 1931; amd. Sec. 5, Ch. 99, L. 1953.

3-2438. (2620.38) **Condemnation of unfit products.** The commissioner of agriculture, through his agents, or employees, is authorized to condemn any milk, cream, butter, cheese, ice cream or other product of milk, which is found to be impure, unclean, unwholesome or stale, or that is produced, manufactured, handled or kept in an unsanitary place, or that is adulterated; and, he shall have power to mark for identification with a nontoxic substance, any condemned milk or product of milk.

History: En. Sec. 33B, Ch. 93, L. 1929 by Sec. 9, Ch. 39, L. 1931.

Collateral References

Food⇐24.

36A C.J.S. Food §§ 50-56.

3-2439. (2620.39) **Condemnation of unfit products—regulation of sale of dairy products containing extraneous fats.** It shall be unlawful for any person, firm, or corporation, by himself, his servant or agent, or as the servant or agent of another to manufacture, sell or exchange, or have in possession with intent to sell or exchange, any milk, cream, skim milk, buttermilk, condensed or evaporated milk, powdered milk, condensed skim milk, or any of the fluid derivatives of any of them to which has been added any fat or oil other than milk fat, either under the name of said products or articles or the derivatives thereof or under any fictitious or trade name whatsoever. Nothing in this section shall be construed to prohibit the shipment into this state from a foreign state and the first sale thereof in this state in the original package intact and unbroken, of any of the products or articles, the manufacture, sale or exchange of which or possession of which, with intent to sell or exchange is prohibited hereby.

History: En. Sec. 34, Ch. 93, L. 1929.

References

United States v. Carolene Products Co., 304 US 144, 150, 82 LEd 1234, 58 SCt 778.

3-2440. (2620.40) **Renovated butter.** No person shall sell any butter made by taking original packing stock or other butter, or both, and melting the same and drawing off or extracting the butterfat and mixing

such fat with skimmed milk or cream, or other milk products, and rechurning or reworking such mixture; or any butter product by any process commonly known as boiled process, or renovated butter, unless the words "Renovated Butter" shall be plainly branded with bold-faced letters, at least one-half (½) inch in length, on top and sides of such receptacle, package, or wrapper in which it is kept or sold. And if such butter is exposed for sale uncovered, and not in a receptable, package or wrapper, then a placard containing the words "Renovated Butter" shall be attached, printed in style and manner as aforesaid, to the mass of butter in such a manner as to be easily seen and read by purchasers; and in addition to such markings, the seller shall, at the time of sale, stamp the package with the words "Renovated Butter" in letters at least one-half inch (½) in height.

History: En. Sec. 35, Ch. 93, L. 1929.

Collateral References

Constitutionality of requirements of disclosure by label of material or ingredients of article sold or offered for sale. 57 ALR 686.

3-2441. (2620.41) **Patent butter.** No person shall sell as pure butter any substance in which an abnormal quantity of casein or other ingredients has been incorporated.

History: En. Sec. 36, Ch. 93, L. 1929.

3-2442. (2620.42) **Imitation or filled cheese.** No person shall manufacture, deal in, sell, offer, or expose for sale, or exchange as cheese, any article or substance in the semblance of or imitation of cheese, made exclusively of unadulterated milk or cream, or both, into which any animal, intestinal, or offal fats or oils, or melted butter in any condition or state of modification of the same, or oleaginous substance of any kind not produced from unadulterated milk or cream, shall have been introduced.

History: En. Sec. 37, Ch. 93, L. 1929.

Cross-Reference

Labeling requirements, secs. 94-35-145 to 94-35-147.

3-2443. (2620.43) **Use of coloring matter regulated.** No person shall coat, powder or color with annato or any coloring matter whatsoever, any product or manufacture made in whole or in part from animal fats or animal and vegetable oils not produced from unadulterated milk or cream by which means such product, manufacture, or compound shall resemble cheese, the product of the dairy; nor shall he have the same in his possession with the intent to sell, nor shall he sell or offer the same for sale. No person or persons shall manufacture, sell or expose for sale any poisonous coloring matter for coloring of dairy food products of any kind, nor shall any person or persons use in dairy products or oleomargarine any poisonous coloring matter manufactured, sold, offered or exposed for sale within the state, nor shall any person or persons sell, offer or expose for sale any dairy food product or oleomargarine containing such poisonous coloring matter.

Oleomargarine shall be sold in packages or cartons containing net weight of sixteen (16) ounces or one (1) or two (2) pound packages.

For the purpose of the act, any requirements herein contained with respect to the use of the word oleomargarine shall be deemed sufficiently complied with by the word margarine.

History: En. Sec. 38, Ch. 93, L. 1929; amd. Sec. 1, Ch. 98, L. 1941; amd. Sec. 6, Ch. 99. L. 1953.

References

Brackman v. Kruse, 122 M 91, 199 P 2d 971.

Collateral References

Food⇐8.

36A C.J.S. Food § 18.

35 Am. Jur. 2d 838, Food, §§ 41-43.

Constitutionality of statute in relation to oleomargarine or other substitute for butter. 53 ALR 474.

Constitutionality of requirement of disclosure by label or materials or ingredients of articles sold or offered for sale. 57 ALR 686.

3-2444. (2620.44) **Regulating oleomargarine advertising.** It shall be unlawful for any person in connection with the sale, advertisement, or offering for sale of oleomargarine or any other substance intended to be used as a substitute for butter, and which substance is made wholly or in part from animal or vegetable fats other than the fat of pure milk or cream, to use the words "dairy," "creamery," "butter," "cream," or any picture of a cow or cows or the name of any breeds of cattle. A violation of the provisions of this section shall constitute a misdemeanor and shall subject the offender on conviction to a fine of not less than fifty dollars ($50.00) and not more than five hundred dollars ($500.00) or to imprisonment for not less than thirty days (30) nor more than six months (6), or to both such fine and imprisonment.

History: En. Sec. 39, Ch. 93, L. 1929.

References

Brackman v. Kruse, 122 M 91, 199 P 2d 971.

3-2445, 3-2446. (2620.45, 2620.46) **Unconstitutional.**

Unconstitutional

These sections (Secs. 40, 41, Ch. 93, L. 1929; Sec. 1, Ch. 87, L. 1931), providing a license for the sale of oleomargarine, filled cheese and substitutes for dairy products, were declared unconstitutional in Brackman v. Kruse, 122 M 91, 199 P 2d 971. For new regulatory law, see secs. 27-501 to 27-503, 27-505, 27-507 to 27-520.

3-2447. (2620.47) **Skimmed milk — regulation of sale.** Milk from which cream has been removed, if such is otherwise wholesome and unadulterated, may be sold as such to makers of skim milk cheese or other manufacturers or to a consumer as hereinafter defined; but in the latter case only from vessels legibly marked with the words "skimmed milk" in plain black letters upon a light colored background and each letter being at least one inch (1) high and one-half (½) inch wide, and said words being placed on the top or side of each vessel. These requirements, however, shall not apply to skimmed or separated milk delivered to any patron of the creamery who regularly sells whole milk to the proprietor thereof, but all skimmed milk so delivered shall first be pasteurized at a temperature of at least one hundred and forty-five degrees (145°) Fahrenheit and held for thirty minutes (30) before it is returned to the patrons.

History: En. Sec. 42, Ch. 93, L. 1929.

Collateral References

Constitutionality of requirement of disclosure by label of material or ingredients of articles sold or offered for sale. 57 ALR 686.

Construction and application of regulations as to milk. 122 ALR 1062.

3-2448. (2620.48) **Adulterated milk — regulations — labeling of cans.** No person shall sell or exchange, or offer or expose for sale or exchange, as milk or cream, any unclean, impure, adulterated, or unwholesome milk or cream, or unclean, impure, adulterated, colored, or unwholesome milk or cream, or sell or exchange or offer or expose for sale or exchange, any such substance in imitation or semblance of milk or cream, which is not milk or cream, nor shall he sell or exchange or offer or expose for sale or exchange, any such substance as and for milk or cream or sell or exchange, or offer or expose for sale or exchange, any article of food, made from such milk or cream, or any article of human food manufactured from any such milk or cream.

Any person delivering milk or cream to any butter or cheese factory, condensed milk gathering station, or railway station, to be shipped to any city, town or village, shall be deemed to expose or offer the same for sale whether the said milk or cream is consigned to himself or another. Each and every can thus delivered, shipped or consigned, if it be not pure milk or cream, must bear a label or card upon which shall be plainly and legibly stated the constituents or ingredients of the contents of the can. There shall be no limit to the percentage of fat contained in unadulterated milk or cream sold to creameries for the sole purpose of manufacture into butter.

History: En. Sec. 43, Ch. 93, L. 1929.

Collateral References
Adulteration⇐4; Food⇐2, 8.

2 C.J.S. Adulteration §§ 5-10; 36A C.J.S. Food §§ 3, 10.
35 Am. Jur. 2d 846, Food, § 51.

3-2449. (2620.49) **Pasteurization defined.** The process of pasteurization, as applied to milk, skim milk, cream and other milk products is hereby defined to be a process for the elimination therefrom of organisms harmful to human beings, which process shall consist of;

(a) Uniformly heating every particle of such milk, skim milk or cream, as the case may be, to the temperature of not less than 142 degrees Fahrenheit and of holding same at a temperature of 142 degrees Fahrenheit for a period of not less than thirty minutes or more than one hour, and immediately thereafter cooling same to a temperature of not above 50 degrees Fahrenheit providing that the cream is pasteurized to be used in the manufacture of cheese or culture milk, in such case the cooling temperature may be above that herein specified;

(b) Milk or the derivatives that are to be used in the manufacture of milk products and cream may be pasteurized by heating above 142 degrees Fahrenheit when every particle of which is uniformly heated and held at a temperature above 145 degrees Fahrenheit, the time for holding may be decreased from thirty minutes by one minute for each degree of temperature above 145 degrees Fahrenheit. If milk is repasteurized it must not be sold for market milk.

History: En. Sec. 44, Ch. 93, L. 1929; amd. Sec. 4, Ch. 68, L. 1937.

Collateral References
Food⇐5.
36A C.J.S. Food § 15.
35 Am. Jur. 2d 848, Food, § 53.

3-2450. (2620.50) **Creameries to pasteurize milk.** All milk or cream used in any creamery within the state of Montana for the purpose of being made into butter for sale or other commercial purposes, shall be pasteurized by one of the two methods required in this act. A creamery is defined as a place where the milk or cream from three or more herd of cows, owned and kept independently of one another, is used for making butter for sale or other commercial purposes.

History: En. Sec. 45, Ch. 93, L. 1929.

Collateral References

Constitutionality of regulations as to milk. 18 ALR 235; 42 ALR 556; 58 ALR 672; 80 ALR 1225; 101 ALR 64; 110 ALR 644; 119 ALR 243 and 155 ALR 1383.

3-2451. (2620.51) **Ice cream factories to pasteurize milk and cream.** All milk or cream used in the manufacture of ice cream made for sale within the state of Montana shall be pasteurized before being made into such ice cream and all butter used in the manufacture of ice cream made for sale, shall be made from pasteurized materials. The methods of pasteurization employed shall be one of the two methods required in this act.

It is provided, however, that ice cream may be made without pasteurization and sold, when all milk or cream used in its manufacture is from cows that have been tuberculin tested within one year preceding the date of such manufacture and found to be nonreacting, and when all other requirements of the laws of the state of Montana have been complied with. That in each and all places within the state of Montana where ice cream is sold, and the provisions of this act have been complied with, a notice issued under the authority of the division of farming and dairying of the state department of agriculture and countersigned by the chief of said division of farming and dairying, shall be posted in a conspicuous place, informing the public that the ice cream sold or offered for sale there is made from pasteurized materials, or from milk or cream from tuberculin tested and nonreacting cows as the case may be.

History: En. Sec. 46, Ch. 93, L. 1929.

Compiler's Note

The compiler has, pursuant to section 3-101.1, subsituted "department of agriculture" for "department of agriculture, labor and industry" in this section.

Collateral References

Validity, construction, and application of statutes or ordinances relating specifically to ice cream or other frozen milk products. 111 ALR 112.

3-2452. (2620.52) **Pasteurization apparatus and records.** All apparatus used for the pasteurization of milk, skim milk or cream shall be kept in strictly clean and sanitary condition and every pasteurizing plant shall be equipped with sufficient recording thermometer devices to accurately record the temperature to which, and the length of time for which the pasteurized product has been heated. All recording thermometer devices used in the pasteurization of any milk, skim milk or cream must be approved by the department. Any person using pasteurizing apparatus within the state of Montana, shall date, preserve, and keep on file for a period of not less than two months after the same are made, all records made by such thermometer, or in lieu of such preservation may deliver such records to any public officer authorized by law or ordinance to receive the same, and said records shall, at all times be open to the inspection of said depart-

ment, the state board of health, the livestock sanitary board, and all other state, county and municipal officers charged with the enforcement of laws and ordinances respecting dairy products or the public health.

History: En. Sec. 47, Ch. 93, L. 1929.

3-2453. (2620.53) **Pasteurization advertising on containers.** It shall be unlawful for any person, firm or corporation by himself or itself or by his or its servant, agent or employee, to sell, offer for sale, or exchange, or have in his or its possession for sale or exchange, any milk, skim milk, cream, butter, or ice cream in any container or package, marked, labeled, or in any other way designating the contents thereof as "pasteurized," unless the same has been treated by such a process of pasteurization as is required by the laws of the state of Montana, or has been made from pasteurized materials.

History: En. Sec. 48, Ch. 93, L. 1929.

3-2454. (2620.54) **Penalty.** Any person, firm or corporation who either directly or indirectly, or by his or its servant, agent or employee, shall violate any of the provisions of the preceding five sections of this act, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars ($25.00) nor more than two hundred dollars ($200.00) or by imprisonment in the county jail for not less than ten days nor more than sixty days, or by both fine and imprisonment.

History: En. Sec. 49, Ch. 93, L. 1929.

Collateral References

Food⇨16.
36A C.J.S. Food §§ 13, 29-38.

3-2455. (2620.55) **Regulation and labeling of imported dairy products.** Every person, company, or corporation selling or offering for sale in the state of Montana such food products as eggs, butter, or any dairy products, imported from foreign countries, shall affix by pasting upon such food products sold or offered for sale, or upon the case or package in which such food products may be contained, a label upon which shall be printed the name of the country or countries from which such product has been imported, the date when shipped, and the date when received by the person, company, or corporation selling or offering same for sale.

History: En. Sec. 50, Ch. 93, L. 1929.

3-2456. (2620.56) **Registry of names and trade-marks.** When any dealer in dairy products wishes to retain for himself a name, brand or trade-mark, the same may be registered with the state department of agriculture, and on no account shall that name, brand or trade-mark be used by another, unless duly consigned, given or sold to him by the originator or by the one to whom it belongs.

History: En. Sec. 51, Ch. 93, L. 1929.

Compiler's Note

The compiler has, pursuant to section 3-101.1, substituted "department of agriculture" for "department of agriculture, labor and industry" in this section.

Collateral References

Trade-Marks and Trade-Names and Unfair Competition⇨43 et seq.
87 C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 138-140, 142 et seq.

3-2457. (2620.57) **Other licenses for producers of dairy products.** The provisions of this act relative to the issuance of licenses have reference only to such licenses as are required to be procured from the department of agriculture of the state of Montana. Nothing herein contained shall be deemed to repeal section 46-232 of the Revised Codes of Montana, pertaining to the issuance of licenses by the livestock sanitary board of Montana to the several producers of dairy products enumerated in said act.

History: En. Sec. 52, Ch. 93, L. 1929.

Compiler's Note

The compiler has, pursuant to section 3-101.1, substituted "department of agriculture" for "department of agriculture, labor and industry" in this section.

3-2458. (2620.58) **Antimonopoly statutes made applicable to producers of dairy products.** The provisions of sections 94-1107 to 94-1114 inclusive, relating to monopoly in the purchase or sale of commodities and products in general use, are hereby expressly made applicable to all persons, firms, copartnerships and corporations engaged in the business of buying milk, cream or butterfat for the purpose of manufacture, who shall violate any of the provisions of said sections or any of them. All milk, cream, butterfat, butter, cheese, ice cream and other dairy products are hereby declared to be commodities and products in general use within the meaning of the sections aforesaid.

History: En. Sec. 53, Ch. 93, L. 1929.

Collateral References

Monopolies⇐12 et seq.
58 C.J.S. Monopolies § 17 et seq.

3-2459. (2620.59) **Penalty for interference with officers of department.** It shall be unlawful for any person or persons to in any manner interfere with any duly authorized officer, agent or inspector of the department of agriculture of the state of Montana in the making of any of the inspections or in the taking of any of the samples required to be made or taken by such officer, agent or inspector under the terms of this act, providing such inspection is made by the officer during normal business hours, Sundays and holidays included.

No person owning, operating, or in charge of any creamery, factory, store, or other place of business which is subject to inspection or entry by an officer, agent or inspector of said department for the performance of any of the duties enjoined on such officer, agent or inspector by this act, shall refuse to allow said entry or inspection by said officer, agent or inspector, nor in any manner obstruct the same. A violation of the provisions of this section shall constitute a misdemeanor and shall subject the offender to a fine of not less than fifty dollars ($50.00) and not more than five hundred dollars ($500.00) or to imprisonment in the county jail for not less than one nor more than thirty days or to both such fine and imprisonment.

History: En. Sec. 54, Ch. 93, L. 1929.

Compiler's Note

The compiler has, pursuant to section 3-101.1, substituted "department of agriculture" for "department of agriculture, labor and industry" in this section.

Collateral References

Food⇐12.
36A C.J.S. Food §§ 21, 22,26-28.

3-2460. (2620.60) **General penalties for violation of act.** Any person who shall violate any of the provisions of this act, or who shall fail to comply with the regulations prescribed in this act, or who shall fail or neglect to obey any lawful order of the department of agriculture of the state of Montana or the commissioner or any other officer thereof, made pursuant to the authority of this act, shall be deemed guilty of a misdemeanor and shall, unless a specific penalty is otherwise provided in this act for such offense, be punished by a fine of not less than twenty-five dollars ($25.00) and not more than five hundred dollars ($500.00) or by imprisonment in the county jail for not to exceed six months, or by both such fine and imprisonment.

History: En. Sec. 55, Ch. 93, L. 1929.

Compiler's Note

The compiler has, pursuant to section 3-101.1, substituted "department of agriculture" for "department of agriculture, labor and industry" in this section.

Cross-Reference

Carrying on business without license, penalty, sec. 94-1511.

3-2461. (2620.61) **Grading of milk and cream.** Hereinafter all milk or cream purchased by any person for use in the manufacture of butter, cheese or other dairy products within the state of Montana, shall be graded as follows, and shall conform to the following grade requirements:

1. Unlawful milk or cream: All milk and cream shall be considered unlawful that is musty, rancid, dirty or with marked undesirable odors, and shall not be sold, purchased, or used for any food purposes whatsoever. (Cream and milk of this character shall be condemned.)

2. Penalty: Failure to comply with the requirements of this section shall constitute a misdemeanor, punishable as provided in section 3-2454, to which this section is added. In addition, if the purchaser is a licensed creamery, cheese factory, ice cream factory, or milk or cream buying or collecting station, or a licensed cream grader, weigher or sampler, such purchaser shall be subject to a revocation of his or its license.

History: En. Sec. 59, Ch. 93, L. 1929 by Sec. 10, Ch. 39, L. 1931; amd. Sec. 1, Ch. 39, L. 1933.

3-2462. (2620.62) **Alkaline rapid test.** The alkaline rapid test with phenolphthalein indicator, shall be used in determining the acidity of all cream purchased by cream stations, creameries or plants where cream is purchased for commercial sweet cream or to be manufactured into butter, cheese, ice cream, or other dairy products, or on all cream routes. The testing solution used to be standardized by the state dairy department.

History: En. Sec. 60, Ch. 93, L. 1929 by Sec. 10, Ch. 39, L. 1931.

3-2463. (2620.63) **Milk and cream used in manufacture.** All milk used in the manufacture of butter, ice cream, or cheese must conform to the standard grading for cream.

History: En. Sec. 61, Ch. 93, L. 1929 by Sec. 10, Ch. 39, L. 1931.

3-2464. (2620.64) **Use of tobacco in plants prohibited.** The use of tobacco in any form, in that part of a creamery, receiving station or manufacturing plant, where cream or milk is sampled, weighed, graded, churned or pasteurized, is hereby prohibited.

History: En. Sec. 62, Ch. 93, L. 1929 by Sec. 10, Ch. 39, L. 1931.

3-2465. (2620.65) **Cream graders, weighers and samplers.** All persons, firms, copartnerships, corporations or marketing associations of every description, receiving or purchasing milk or cream, and all persons collecting on milk or cream routes, milk or cream for the manufacture of cheese, ice cream or butter or for distribution as commercial sweet cream, shall provide a licensed cream grader, weigher and sampler at each point where milk or cream is purchased.

History: En. Sec. 63, Ch. 93, L. 1929 by Sec. 10, Ch. 39, L. 1931.

3-2466. (2620.66) **Cream grader, weigher and sampler license and examination.** No person shall grade, weigh or sample any milk or cream used or to be used in the manufacture of butter, cheese or other dairy products in the state of Montana, without first procuring a license as a cream grader, weigher and sampler from the department of agriculture, and passing such examination therefor as may be provided by said department; provided, however, that temporary permits pending the taking of such examination may be issued by the department for a period of not to exceed thirty (30) days. A fee of five dollars ($5.00) shall be paid by the applicant for such license or permit and said license shall expire and be renewable on December 31st of each year.

History: En. Sec. 64, Ch. 93, L. 1929 by Sec. 10, Ch. 39, L. 1931; amd. Sec. 3, Ch. 121, L. 1965.

3-2467. (2620.67) **Employment of unlicensed persons prohibited.** Any creamery, cheese factory or other buyer of milk products for manufacturing purposes, who shall knowingly employ as a Babcock test operator or as a milk and cream grader, weigher and sampler, any person whose license as such, has been revoked, shall be subject to a revocation of its own license.

History: En. Sec. 65, Ch. 93, L. 1929 by Sec. 10, Ch. 39, L. 1931.

3-2468. (2620.68) **Posting price of butterfat required.** All creameries, cheese factories or other buyers of milk products for direct sale or for manufacturing purposes, shall post each day in some conspicuous place in their factory or place of business, a schedule of the prices, which they pay for butterfat.

History: En. Sec. 66, Ch. 93, L. 1929 by Sec. 10, Ch. 39, L. 1931.

Collateral References

Food⇐4.

36A C.J.S. Food § 14.

3-2469. (2620.69) **Penalties.** The violating of any of the provisions of this act for which no other penalty is provided, shall constitute a misdemeanor and be punishable as provided in section 3-2454.

History: En. Sec. 11, Ch. 39, L. 1931.

Collateral References

Food⇐12.

36A C.J.S. Food §§ 21, 22, 26-28.

3-2470. (2620.70) **Regulations for sale of butter.** Any product manufactured, sold, offered or exposed for sale as butter shall contain not less than 80% milk fat, no tolerance for deficiency being allowed.

History: En. Sec. 5, Ch. 68, L. 1937.

3-2471. (2620.71) **Wholesale butter and cheese dealers' license.** It shall hereafter be unlawful for any person, firm or corporation, by himself, his or its servant or agent, to sell, exchange or offer for sale at wholesale or have in his or its possession with intent to sell or offer for sale or exchange at wholesale any butter or cheese without first securing a license from the department of agriculture of the state of Montana to conduct such sale or exchange. The fee for such license shall be $20.00. Those creameries already having a license from said department permitting them to manufacture butter or cheese shall be exempted from this license. Whenever any person, firm or corporation by himself, his or its servant or agent, or as the agent or servant of another, conduct such sale or exchange in more than one place of business, a separate license shall be obtained for each place of business and a separate fee shall be charged for such license. All wholesalers or jobbers handling butter or cheese shall conduct their business under the same regulations of cleanliness, sanitation and refrigeration as prescribed for dairy manufacturing plants.

History: En. Sec. 6, Ch. 68, L. 1937.

Compiler's Note

The compiler has, pursuant to section 3-101.1, substituted "department of agriculture" for "department of agriculture, labor and industry" in this section.

3-2472. (2620.72) **Condemnation of unfit containers of milk and cream.** The commissioner of agriculture or his agents are authorized to condemn any container of milk or cream that is rusty or unfit for use for such purpose. Any container found unfit for use as a container for milk or cream shall be condemned and marked for identification by the commissioner of agriculture or his agents. Should the container be used for milk and cream after being so condemned, it shall be destroyed.

History: En. Sec. 7, Ch. 68, L. 1937.

36A C.J.S. Food §§ 50-56.

35 Am. Jur. 2d 859, Food, § 59.

Collateral References

Food⇐24.

3-2473 to 3-2475. (2625.1 to 2625.3) **Repealed—Chapter 99, Laws of 1953.**

Repeal

These sections (Secs. 1 to 3, Ch. 120, L. 1931), prohibiting the manufacture and sale of colored oleomargarine or imitation butter, were repealed by Sec. 9, Ch. 99, Laws 1953.

3-2476. "Ice cream" defined—ingredients—standards. (a) Ice cream is the food prepared by freezing, while stirring, a pasteurized mix composed of one or more of the optional dairy ingredients specified in subsection (b) of this section, sweetened with one or more of the optional sweetening ingredients specified in subsection (c) of this section, flavored

with one or more of the optional flavoring ingredients specified in subsection (d) of this section. Water may be added and one or more of the optional egg ingredients specified in subsection (e) may be used; one or more of the optional stabilizing ingredients specified in subsection (f) may be used; one or more of the optional acidity standardizing ingredients specified in subsection (g) may be used subject to the conditions set forth in subsections (e), (f) and (g), as the case may be.

Harmless coloring may be added. The mix may be seasoned with salt and may be homogenized. The kind and quantity of optional dairy ingredients used, and the content of milk fat and total milk solids shall be such that the weight of milk fat and total milk solids shall be not less than 10% and 20% respectively of the weight of the finished ice cream; except that when one or more of the optional flavoring ingredients specified in subsection (d), (4), (5), (6), (7) or (8) are used, then the weight of milk fat and total milk solids shall be not less than 10% and 20% respectively, except for such reduction in milk fat and in total milk solids as is due to the addition of one or more of the optional ingredients specified in subsection (d), (4), (5), (6), (7) or (8), but in no case shall it contain less than 9% of milk fat nor less than 16% of total milk solids. Ice cream shall contain not less than 1.6 pounds of total food solids per gallon and shall weigh not less than four and one-half (4½) net pounds per gallon.

(b) The optional dairy ingredients referred to in subsection (a) of this section are cream, dried cream, butter, butter oil, concentrated milk fat, milk, concentrated milk, evaporated milk, sweetened condensed milk, superheated condensed milk, dried milk, skim milk, concentrated (evaporated or condensed) skim milk, superheated condensed skim milk, sweetened condensed skim milk, sweetened condensed partly skimmed milk, nonfat dry milk solids, edible dry whey, cheese whey, sweet cream buttermilk, condensed sweet cream buttermilk, dried sweet cream buttermilk, and any of the foregoing products from which all or a portion of the lactose has been removed after crystallization or the lactose has been converted to simple sugars by hydrolysis. Harmless optional ingredients may be used to prevent fat oxidation in any of the foregoing optional dairy ingredients in an amount not exceeding .005% of the weight of the butterfat present in any such dairy ingredient.

(c) The optional sweetening ingredients referred to in subsection (a) of this section are sugar, liquid sugar, dextrose, invert sugar (paste or syrup), lactose, corn sugar, dried or liquid corn syrup, maple syrup, maple sugar, honey, brown sugar, malt syrup, dried malt extract, molasses (other than blackstrap).

(d) The optional flavoring ingredients referred to in subsection (a) of this section are (1) natural food flavoring, (2) artificial food flavoring, (3) fruit juice, which may be fresh, frozen, canned, concentrated or dried and which may be sweetened and thickened with one or more of the optional stabilizing ingredients specified in subsection (b), (4) chocolate, (5) cocoa, (6) fruit which may be fresh, frozen, canned, concentrated, shredded, pureed, comminuted or dried and which may be sweetened, thickened

with stablizer, and acidulated with citric, tartaric, malic, lactic or ascorbic acid, (7) nut meats, and (8) confectionery.

(e) Liquid eggs, frozen eggs, dried eggs, egg yolks, frozen yolks, dried yolks; but the total weight of egg yolk solids in any such ingredient used singly, or in combination of two or more such ingredients used, is less than the minimum prescribed by section 3-2478 for French ice cream.

(f) The optional stabilizing ingredients specified in subsection (a) of this section are gelatin, algin, extractive of Irish moss, psyllium seed husk, agar-agar, gum acacia, gum karava, locust bean gum, gum tragacanth, cellulose gum, guar seed gum, monoglycerides or diglycerides or both of fat forming fatty acids or other harmless stabilizers or emulsifiers; but the total weight of the active material contained in the solids of any such ingredients used singly, or of any combination of two or more such ingredients used, shall be not more than 0.5% of the weight of the finished ice cream.

(g) The following harmless optional ingredients or combination of such ingredients may be added to control viscosity, adjust protein stability and adjust pH of the combined mix ingredients:

(1) Sodium bicarbonate
(2) Magnesium oxide as such or as carbonate or hydroxide
(3) Calcium oxide as such or as hydroxide or sucrate
(4) Sodium citrate
(5) Sodium phosphates

The total of ingredients (1) through (3) shall not exceed 0.1% by weight of the finished mix; nor shall the weight of ingredients (4) and (5) exceed 0.2% by weight of the finished mix.

The percentage of developed lactic acid in the mix prior to the addition of the above listed optional ingredients shall not exceed 0.003% by weight for each one per cent (1%) of milk-solids-not-fat present in the mix.

History: En. Sec. 1, Ch. 172, L. 1953; amd. Sec. 1, Ch. 20, L. 1963.

Collateral References
Food⇐5.
36A C.J.S. Food § 15.
35 Am. Jur. 2d 855, Food, § 61.

3-2477. Low fat ice cream—standards. Low fat ice cream shall conform to the definition and standard of identity prescribed for ice cream by section 3-2476, except that it shall contain not less than 5% but not more than 9.99% of milk fat and not less than 15% total milk solids and except that it shall contain not less than 1.5 pounds of food solids per gallon.

History: En. Sec. 2, Ch. 172, L. 1953.

3-2478. French ice creams—standards. French ice cream, frozen custard, French custard ice cream, low fat French ice cream, low fat frozen custard and low fat French custard ice cream shall conform to the definition and standard of identity prescribed for ice cream or low fat ice cream by sections 3-2476 and 3-2477, except that one or more of the optional egg ingredients permitted by section 3-2476 shall be used in such quantity that the total weight of egg yolk solids therein shall be not less than 1.4% of the weight of the finished product, except that when any of the optional

flavoring ingredients specified in section 3-2476 (d), (4), (5), (6), (7) or (8) is used; in which case the weight of egg yolk solids shall be not less than 1.12% of the weight of the finished product.

History: En. Sec. 3, Ch. 172, L. 1953.

3-2479. Ice milk—standards. Ice milk shall conform in all respects to the definition and standard of identity for ice cream prescribed in section 3-2476, except that it shall contain not less than 2% but not more than 4.99% of milk fat and not less than 11% total milk solids and except that it shall contain not less than 1.3 pounds of food solids per gallon.

History: En. Sec. 4, Ch. 172, L. 1953.

3-2480. Sherbet—standards. Sherbet is the food prepared by freezing, while stirring, a mix composed of water, one or a combination of the optional pasteurized dairy ingredients specified in section 3-2476 (b), one or more of the optional sweetening ingredients specified in section 3-2476 (c), fruit, fruit juice or flavoring as hereinafter provided. It may contain one or more of the optional stabilizing ingredients specified in section 3-2476 (f) provided the weight of such stabilizer is not more than .5% of the weight of the finished sherbet. The kind and quantity of optional dairy ingredients used shall be such that the total milk solids content shall be not more than 5% by weight of the finished sherbet and the milk fat content shall be not more than 2% by weight of the finished sherbet. It shall contain fruit or fruit juice as described in section 3-2476 (d) (3) and section 3-2476 (d) (6), natural or artificial food flavoring. It may contain citric, tartaric, malic, phosphoric or lactic acid. The acidity of the finished sherbet shall be not less than 0.35% of acid as determined by titrating with standard alkali and expressed as lactic acid. It shall weigh not less than six pounds per gallon.

History: En. Sec. 5, Ch. 172, L. 1953.

3-2481. Water ice—standards. Water ice shall conform in all respects to the definition and standard of identity for sherbet prescribed in section 3-2480 except that it shall not contain any of the optional dairy ingredients and consequently shall not meet the provision respecting total milk solids and butterfat.

History: En. Sec. 6, Ch. 172, L. 1953.

3-2482. Labeling. No person shall label, designate, advertise, offer for sale, or sell any frozen food product as ice cream, low fat ice cream, French ice cream, frozen custard, French custard ice cream, low fat French ice cream, low fat frozen custard, low fat French custard ice cream, ice milk, sherbet or water ice unless such frozen food product conforms to the definition and standard of identity established hereinabove for ice cream, low fat ice cream, French ice cream, frozen custard, French custard ice cream, low fat French ice cream, low fat frozen custard, low fat French custard ice cream, ice milk, sherbet or water ice.

History: En. Sec. 7, Ch. 172, L. 1953.

3-2483. Animal fat—vegetable fat or oil—labeling. Any frozen food product which is made in semblance of or in imitation of the dairy prod-

ucts hereinbefore enumerated which contains, in whole or in part, animal fat (other than milk fat) or vegetable fat or oil in any amount (other than any such fat or oil which is naturally present in any flavoring ingredient specified in section 3-2476(d)) shall be labeled and designated as a frozen animal fat product or frozen vegetable fat product, or a combination thereof, whichever the case may be. Such vegetable fat product, or animal fat product, or any combination thereof, shall be manufactured from a pasteurized mix. All establishments, creameries, or factories which manufacture, sell or offer to sell such animal fat or vegetable fat products, or any combination thereof, shall be subject to the sanitary, reporting and other regulatory requirements of chapter 24 of Title 3, Revised Codes of Montana, 1947. No representations shall be made or suggested by statement, word, grade designation, design, device, symbol, sound or any combination thereof on any package or container or in or on any advertising media that such animal fat or vegetable fat product, or any combination thereof, is ice cream, French ice cream, frozen custard, French custard ice cream, low fat ice cream, low fat French ice cream, low fat frozen custard, low fat French custard ice cream, ice milk, sherbet or water ice. The immediate container shall be plainly marked, stamped, labeled or printed in plain, bold-faced letters, with the words, "Animal Fat Product," "Vegetable Fat Product," "Animal-Vegetable Fat Product," or "Vegetable-Animal Fat Product," whichever the case may be, and shall bear thereon the common or usual name of each of the ingredients therein, including the fats or oils, except that spices, flavorings and colorings may be designated as spices, flavorings and colorings without naming each.

History: En. Sec. 8, Ch. 172, L. 1953.

3-2484. License as required by section 3-2416. It shall be unlawful for any person, persons, partnership, corporation, firm or association to manufacture any product hereinbefore mentioned, including frozen animal fat or vegetable fat products, or combinations thereof, without first securing a license from the department of agriculture of the state of Montana at the gallonage rate prescribed by section 3-2416.

History: En. Sec. 9, Ch. 172, L. 1953.

3-2485. Sanitary requirements. All products hereinbefore mentioned, and all persons, partnerships, corporations, firms and associations which manufacture, store, handle, sell, offer to sell, or otherwise deal in any way in any or all of the products hereinbefore mentioned are hereby specifically declared to be subject to all the sanitary and other requirements prescribed for dairy products and manufacturing plants by chapter 24 of Title 3, Revised Codes of Montana, 1947, and all acts amendatory thereof, save and except the definitions contained in section 3-2404, which are hereby superseded and declared to be of no force or effect in so far as they relate to the products defined herein.

History: En. Sec. 10, Ch. 172, L. 1953.

3-2486. Commissioner of agriculture to enforce act and to promulgate rules and regulations. The commissioner of agriculture is hereby authorized and directed to administer and supervise the enforcement of this act

and to promulgate and enforce all reasonable rules and regulations, exclusive of rules and regulations to establish definitions and standards of identity for any of the products hereinbefore mentioned, in aid of and consistent with this act to carry out its purpose. Every such new or amended rule or regulation shall be mailed, postage prepaid and properly addressed, to every person, partnership, corporation, firm or association licensed hereunder at least forty-five (45) days prior to the date on which the rule or regulation shall become effective. Upon application in writing filed at least fifteen (15) days before the effective date of such rule or regulation by any person, partnership, corporation, firm or association licensed hereunder, the commissioner of agriculture shall vacate the effective date of such proposed rule or regulation and hold a public hearing on and take evidence concerning the proposed rule or regulation. Within thirty (30) days after the conclusion of such hearing the commissioner of agriculture shall make written findings and conclusions and a written decision based thereon, determining whether such proposed new or amended rule or regulation shall be promulgated. No new or amended rule or regulation promulgated following such a hearing and decision shall take effect until ninety (90) days after the date of such decision. The district court of the first judicial district shall have jurisdiction to review, modify or set aside any such decision promulgating a new or amended rule or regulation under this act, upon petition made to it at any time prior to the effective date of such rule or regulation by any person claiming to be adversely affected by such decision.

Rules and regulations promulgated hereunder shall have the force and effect of law, and violation of any of such rules and regulations shall constitute a misdemeanor, punishable as provided in section 3-2487.

The commissioner of agriculture is further authorized and directed to provide for such periodic inspections and investigations as he may deem necessary to disclose violations; to receive and provide for the investigation of complaints; and to provide for the institution and prosecution of civil or criminal actions or both. The provisions of this act and the rules and regulations issued in connection herewith may be enforced by injunction in any court having jurisdiction to grant injunctive relief, and adulterated or misbranded articles illegally held or otherwise involved in a violation of this act or of said rules and regulations shall be subject to seizure and disposition in accordance with an order of court.

History: En. Sec. 11, Ch. 172, L. 1953.

3-2487. Penalty. Any person, firm or corporation who either directly or indirectly, or by his or its servant, agent or employee, shall violate any of the provisions of this act, or of the rules and regulations promulgated hereunder, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than two hundred dollars ($200.00) or by imprisonment in the county jail for not more than sixty (60) days, or by both such fine and imprisonment; provided, however, that nothing in this act shall be construed as requiring the commissioner of agriculture to institute criminal prosecution under this act for minor

violations whenever he believes the public interest will be adequately served in the circumstances by a suitable written notice or warning.

History: En. Sec. 12, Ch. 172, L. 1953.

Collateral References
Food⇐16.
36A C.J.S. Food § 30.

CHAPTER 25

MONTANA QUALITY LABEL—USE ON INSPECTED AGRICULTURAL AND FOOD PRODUCTS

Section 3-2501. Montana quality label.
3-2502. Limitation on use of label.
3-2503. Procurement and use of labels—information concerning—disposal of moneys.
3-2504. Wrongful use of label—penalty—injunction—prosecutions.
3-2505. Definitions.

3-2501. Montana quality label. (a) The commissioner of agriculture is hereby authorized to make use of an outline map of the state of Montana and the word "Montana," printed, lithographed, inscribed, engraved or otherwise impressed upon the labels, tags, seals or containers of any agricultural or food product, by any person who has availed himself of the continuous official inspection service offered by the department of agriculture, as an indication that such product has been inspected by the officers, agents or licensed inspectors of the said department and that the said products are of such quality and description as are indicated on such label, tag, seal or container, in the manner hereinafter prescribed. The said outline map with the word Montana when made use of pursuant to the provisions of this act shall be known as the "Montana quality label." (b) In any instance when an authorized department, agent or officer of the United States collaborates with the department of agriculture of this state in the inspection of any such product, the Montana quality label may, with the consent of the appropriate department, agency or officer of the United States be superimposed upon an outline map of the United States on any such label, tag, seal or container, this indicating inspectional collaboration between the said division and such department, agency or officer of the United States.

History: En. Sec. 1, Ch. 290, L. 1947.

Collateral References
Food⇐3.
36A C.J.S. Food § 12.

3-2502. Limitation on use of label. The Montana quality label shall not be used except in accordance with the rules and regulations prescribed therefore by the commissioner, and in no case shall it be used upon the label, tag, seal or container, or the product of any farm, factory, mill or any other producing, processing, packing, preparing or dressing establishment unless such product is produced, processed, packed, prepared or dressed under continuous official inspection.

History: En. Sec. 2, Ch. 290, L. 1947.

3-2503. Procurement and use of labels—information concerning—disposal of moneys. (a) The commissioner may cause to be made, printed,

or otherwise prepared, from time to time, such quantity of labels, tags, and seals with the Montana quality label printed, lithographed, inscribed, engraved or impressed thereon as will be sufficient to supply the demand therefor; and he may furnish such labels, tags, and seals at reasonable prices to any producer, processor, packer or dresser who has availed himself of the said continuous official inspection service. Nothing in this act, however, shall be construed to preclude the commissioner from permitting, under the rules and regulations by him prescribed, any such producer, processor, packer or dresser to make or prepare, or to cause to be made or prepared, the labels, tags, or seals to be used upon his own product, or to print, stamp or otherwise placed or cause to be placed the Montana quality label, upon such products or containers thereof which have been subject to continuous inspection; provided that in any case such labels, tags, seals, stamps or other devices shall be of such design as the commissioner, may from time to time determine. (b) The commissioner is further authorized, in co-operation with the United States department of agriculture and/or otherwise, to make use of any available and appropriate means to disseminate information concerning the Montana quality label and the products which may lawfully bear it, and to popularize the use thereof. (c) All moneys derived from the furnishing of said labels, tags, and seals, or from permitting the use in any other manner of the Montana quality label shall be deposited in the state treasury to the credit of the general fund.

History: En. Sec. 3, Ch. 290, L. 1947; amd. Sec. 44, Ch. 147, L. 1963.

3-2504. Wrongful use of label — penalty — injunction — prosecutions. (a) Any person who shall use the Montana quality label in violation of any provision of this act, or who shall, with the intent to mislead or deceive, use any imitation, counterfeit or likeness thereof on the label, tag, seal, container, sign or otherwise of any product of any kind or description, which is sold or offered for sale, or who shall use the Montana quality label or, with like intent to mislead or deceive, use any imitation, counterfeit likeness thereof upon or in connection with any offer to sell or advertisement for the sale, or use of any product of any kind or description which does not in fact lawfully bear the Montana quality label, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than ten ($10.00) dollars nor more than five hundred ($500.00) dollars. (b) Provided further that the word Montana shall not be used on any brand or label not of No. 1 quality or its equivalent or better. (c) Any court of record having general chancery jurisdiction in this state shall have jurisdiction to enjoin the use of the Montana quality label or any imitation, counterfeit or likeness thereof used in violation of this act. (d) The commissioner of agriculture may cause prosecutions for violations of this act, as well as the injunction proceedings provided for in this section, to be instituted through the respective attorneys for the state of the several counties and cities, or otherwise in his discretion.

History: En. Sec. 4, Ch. 290, L. 1947.

Collateral References

Food⇐16.

36A C.J.S. Food § 30.

3-2505. Definitions. For the purpose of this act the word "person" shall include any individual, partnership, association, union or corporation. "Agricultural and food product" shall include any horticultural, viticultural, dairy, livestock, poultry, bee, other farm or garden product, fish or fishery product, and other foods. "Continuous official inspection" shall mean that an employee or a licensed representative of the department of agriculture, or United States department of agriculture shall regularly and continuously examine the commodity as it is being packed so as to have knowledge of the quality that goes into each package.

History: En. Sec. 5, Ch. 290, L. 1947.

CHAPTER 26

GRASSHOPPER ERADICTION AND CONTROL

Section 3-2601. Public policy.
3-2602. Co-operation and agreements with federal bureau of entomology and plant control.
3-2603. Appropriation.
3-2604. Use of funds.
3-2605. Warrants for claims.
3-2606. Validity of appropriation.

3-2601. Public policy. Whereas, the federal bureau of entomology and plant quarantine, division of grasshopper control in co-operation with the state entomologist of the state of Montana, after a survey has reported that certain contiguous areas of range land within the state are heavily infested with grasshoppers, and

Whereas, such infestation is of such magnitude that owners of land are unable to cope with the situation, even with county assistance, and

Whereas, these infested areas, though being sources of potential mass migrations, constitute a grave threat to other sections of the state, and

Whereas, the federal bureau of entomology has set up a pest control program and is authorized to expend the sum of one hundred thousand dollars ($100,000.00) in the state of Montana on a matching basis with the state and counties, the said bureau to make the purchases of bait and other material, provide and operate bait mixers, trucks and personnel for the hauling of bait, and provide the aircraft and personnel for spreading said bait. It is hereby declared to be a public policy that this state and the several counties of the state co-operate with the federal bureau of entomology and plant quarantine, division of grasshopper control, in and for the control and/or eradication of grasshoppers in those areas where the infestation constitute a threat.

History: En. Sec. 1, Ch. 76, L. 1949.

Collateral References
Agriculture⇐9.
3 C.J.S. Agriculture § 3.

3-2602. Co-operation and agreements with federal bureau of entomology and plant control. The state entomologist of the state of Montana, and the several counties of the state are hereby authorized and empowered to co-operate with the federal bureau of entomology and plant control, grasshopper division, and enter into agreements therewith for the pur-

pose of controlling and/or eradicating the grasshopper pest in those areas where the infestation of such pest constitutes a threat to the land, and crops in such area, and the said counties are hereby authorized to use funds raised by taxation as now provided by law for the purpose of matching funds made available by said federal bureau and the state of Montana for such purpose.

History: En. Sec. 2, Ch. 76, L. 1949.

Collateral References

Agriculture⇐9.
3 C.J.S. Agriculture § 31.

3-2603. Appropriation. There is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of fifty thousand dollars ($50,000.00) or so much thereof as may be necessary for the purposes herein set forth.

History: En. Sec. 3, Ch. 76, L. 1949.

3-2604. Use of funds. The funds hereby appropriated are to be used only in co-operation with the several counties of the state in matching funds of the federal bureau of entomology, division of grasshopper control, allocated to the state, in payment of materials purchased and used by said bureau in its program of control and eradication of the grasshopper pest in any area of the state of Montana under any contract or agreement herein authorized.

History: En. Sec. 4, Ch. 76, L. 1949.

3-2605. Warrants for claims. The state auditor is hereby authorized to draw warrants on said fund on verified claims submitted by the state entomologist and approved by the state board of examiners.

History: En. Sec. 5, Ch. 76, L. 1949.

3-2606. Validity of appropriation. Appropriations herein above provided for shall be deemed and held valid notwithstanding the provisions of the Budget Act.

History: En. Sec. 7, Ch. 76, L. 1949.

CHAPTER 27

CONTROL OF NOXIOUS RODENT PESTS

Section 3-2701. Livestock commission to co-operate with department of interior.
3-2702. Expenditures authorized.
3-2703. Repealed.
3-2704. Purchase and sale of rodent control supplies.

3-2701. Livestock commission to co-operate with department of interior. The state of Montana livestock commission is hereby authorized and directed to co-operate with the United States department of the interior, fish and wildlife service, in the control and destruction of jack rabbits, prairie dogs, ground squirrels, pocket gophers, rats, mice, and other rodents and related animals in this state that are injurious to agriculture, other industries, and the public health in accordance with organized and systematic plans of the fish and wildlife service covering the

control of such noxious rodents and related animals; and for this purpose to enter into written agreements with the fish and wildlife service covering the methods and procedures to be followed in the control and destruction of such noxious rodents and related animals, the extent of supervision to be exercised by either or both the state of Montana livestock commission and the fish and wildlife service, and the use and expenditure of funds hereinafter appropriated: Provided, that state of Montana livestock commission, in co-operation with the fish and wildlife service, is authorized also to enter into co-operative agreements with other governmental agencies, and counties, associations, corporations, or individuals when such co-operation is deemed to be necessary to promote the control and destruction of noxious rodents and related animals.

History: En. Sec. 1, Ch. 136, L. 1949.

Cross-Reference

Control of rodents by county commissioners, secs. 16-1175 to 16-1178.

Collateral References

Agriculture⇐9.
3 C.J.S. Agriculture § 31.
3 Am. Jur. 2d 800-803, Agriculture, §§ 38, 39.

3-2702. Expenditures authorized. The state of Montana livestock commission is hereby authorized to make such expenditures for equipment, materials, supplies, and other expenses, including expenditures for personal services, as may be necessary to execute the functions imposed upon it by this act.

History: En. Sec. 2, Ch. 136, L. 1949.

Collateral References

Agriculture⇐2.
3 C.J.S. Agriculture § 6.

3-2703. Repealed—Chapter 147, Laws of 1963.

Repeal

This section (Sec. 3, Ch. 136, L. 1949), making an appropriation for control of noxious rodent pests was repealed by Sec. 242, Ch. 147, Laws 1963.

3-2704. Purchase and sale of rodent control supplies. In addition to the expenditures hereinbefore authorized the state of Montana livestock commission is authorized to purchase rodent control supplies, including rodent baits, for the use of co-operating governmental agencies, and counties, associations, corporations, or individuals in the control of noxious rodents and related animals, and to make these supplies and baits available to such co-operators at approximate cost.

History: En. Sec. 4, Ch. 136, L. 1949; amd. Sec. 105, Ch. 147, L. 1963.

Collateral References

Agriculture⇐2.
3 C.J.S. Agriculture § 6.

CHAPTER 28

RURAL REHABILITATION

Section 3-2801. Trust assets of rural rehabilitation corporation—commissioner of agriculture designated as official to make application.
3-2802. Agreements with United States secretary of agriculture authorized.
3-2803. Administration of trust assets.
3-2804. Powers of commissioner of agriculture—claims and obligations—property acquired at foreclosure.
3-2805. United States and secretary of agriculture free from liability.

3-2801. Trust assets of rural rehabilitation corporation—commissioner of agriculture designated as official to make application. The commissioner of agriculture is hereby designated as the state official of the state of Montana to make application to the secretary of agriculture of the United States, or any other proper federal official, pursuant and subject to the provisions of Public Law 499, eighty-first Congress, approved May 3, 1950, for the return of the trust assets, either funds or property, held by the United States as trustee in behalf of the Montana rural rehabilitation corporation.

History: En. Sec. 1, Ch. 112, L. 1951.

Compiler's Note

Public Law 499, referred to in this section is compiled in the United States Code as Tit. 40, secs. 440 to 444.

Collateral References

Agriculture⇨2.
3 C.J.S. Agriculture § 6.

3-2802. Agreements with United States secretary of agriculture authorized. The commissioner of agriculture is authorized and directed to enter into agreements with the secretary of agriculture of the United States pursuant to section 2 (f) of the aforesaid Act of the Congress of the United States, upon such terms and conditions and for such periods of time as may be mutually agreeable, authorizing the secretary of agriculture of the United States to accept, administer, expend and use in the state of Montana all or any part of such trust assets or any other funds of the state of Montana which may be appropriated for such uses for carrying out the purposes of Titles I and II of the Bankhead-Jones Farm Tenant Act, in accordance with the applicable provisions of Title IV thereof, as now or hereafter amended, and to do any and all things necessary to effectuate and carry out the purposes of said agreements.

History: En. Sec. 1, Ch. 112, L. 1951.

Compiler's Note

The Bankhead-Jones Farm Tenant Act, referred to in this section, was repealed by Act of Congress August 8, 1961, Public Law 87-128, 75 Stat. 318.

Collateral References

Agriculture⇨3.
3 C.J.S. Agriculture § 10.

3-2803. Administration of trust assets. Funds and the proceeds of the trust assets which are not authorized to be administered by the secretary of agriculture of the United States States under section 3-2802 shall be received by the commissioner of agriculture, and paid by him to the state treasurer for deposit in the federal and private grant clearance fund and used for expenditure or obligation by the department of agriculture for the purpose of section 3-2802, or for use for such of the rural rehabilitation purposes permissible under the charter of the now dissolved Montana rural rehabilitation corporation as may from time to time be agreed upon between the commissioner of agriculture and the secretary of agriculture of the United States, subject to the applicable provisions of said Public Law 499.

History: En. Sec. 3, Ch. 112, L. 1951; amd. Sec. 45, Ch. 147, L. 1963.

Compiler's Note

Public Law 499, referred to in this section is compiled in the United States Code as Tit. 40, Secs. 440 to 444.

3-2804. Powers of commissioner of agriculture—claims and obligations—property acquired at foreclosure. The commissioner of agriculture is authorized and empowered to:

(a) Collect, compromise, adjust or cancel claims and obligations arising out of or administered under this act or under any mortgage, lease, contract or agreement entered into or administered pursuant to this act and if, in his judgment, necessary and advisable, pursue the same to final collection in any court having jurisdiction.

(b) Bid for and purchase at any execution, foreclosure or other sale, or otherwise to acquire property upon which the commissioner of agriculture has a lien by reason of a judgment or execution, or which is pledged, mortgaged, conveyed or which otherwise secures any loan or other indebtedness owing to or acquired by the commissioner of agriculture under this act, and

(c) Accept title to any property so purchased or acquired; to operate or lease such property for such period as may be deemed necessary to protect the investment therein; and to sell or otherwise dispose of such property in a manner consistent with the provisions of this act.

The authority herein contained may be delegated to the secretary of agriculture of the United States with respect to funds or assets authorized to be administered and used by him under agreements entered into pursuant to section 3-2802.

History: En. Sec. 4, Ch. 112, L. 1951.

3-2805. United States and secretary of agriculture free from liability. The United States and the secretary of agriculture thereof, shall be held free from liability by virtue of the transfer of the assets to the commissioner of agriculture of the state of Montana pursuant to this act.

History: En. Sec. 5, Ch. 112, L. 1951.

CHAPTER 29

WHEAT RESEARCH AND MARKETING

Section 3-2901. Short title.
3-2902. Declaration of policy.
3-2903. Creation of wheat research and marketing division—appointment of division chief—powers and duties exercised by administrative committee.
3-2904. Definitions.
3-2905. Governor to appoint administrative committee—duties—composition—districts—nominees—term of office—political affiliations.
3-2906. Compensation—per diem.
3-2907. Removal from office—cause—procedure.
3-2908. Election of chairman—time of meetings.
3-2909. Powers of administrative committee.
3-2910. Establishment of administrative office—expense.
3-2911. Annual assessment on wheat grown.
3-2912. Sale of wheat to federal government—inapplicability of assessment.
3-2913. Buyer's delivery of invoice to grower—form—filing of sworn statement—payment of assessment.
3-2914. Commissioner to file annual report with governor—transmittal of copies to legislature.
3-2915. Receipt of gifts, grants or donations for research purposes.
3-2916. Official bonds of division chief, deputy or assistant.

3-2917. Research and marketing revolving account—sources—use—expenditures.
3-2918. Contracts for carrying out research.
3-2919. Violations of act—penalty.
3-2920. Duration of act—expiration—reversion of remaining funds.

3-2901. Short title. This act may be cited as the Montana Wheat Research and Marketing Act.

History: En. Sec. 1, Ch. 314, L. 1967.

3-2902. Declaration of policy. In the presence of the facts that wheat is the principal grain crop produced in Montana, and as such is an agricultural resource of the first magnitude in the economy of the inhabitants of Montana, a prime factor in the production of wealth and the development and stabilization of property values and of activities and enterprises which are bases and sources of important contributions by taxation to the public revenues, and that Montana wheat is a commodity which enters a world market highly competitive in character, it is hereby declared to be the public policy of the state of Montana to protect and foster the health, prosperity and general welfare of its people by encouraging and promoting intensive, scientific and practical research into all phases of wheat culture and production, marketing and use and into the development of markets for wheat grown in Montana by the department of agriculture of the state of Montana and the division of wheat research therein as constituted by this act.

History: En. Sec. 2, Ch. 314, L. 1967.

3-2903. Creation of wheat research and marketing division—appointment of division chief—powers and duties exercised by administrative committee. (1) There is hereby established a division of wheat research and marketing in the department of agriculture of the state of Montana. The division shall consist of:

(a) the appointive administrative committee herein provided for,

(b) the commissioner of agriculture, ex officio, and

(c) a chief executive officer of the division who shall be known as the chief of the division of wheat research and marketing.

(2) The commissioner of the department of agriculture, acting with the advice and consent of the appointive administrative committee, shall appoint the chief of the division of wheat research and marketing, and subordinate secretarial and clerical assistance.

(3) No researchers or professional or scientific personnel may be employed to carry out the provisions of this act except as provided in section 3-2918.

(4) The other powers prescribed by this act for the division are hereby placed in and may be exercised by the administrative committee; the duties prescribed by this act shall be carried out by the administrative committee and it shall have the general supervision of all activities and personnel, but it may delegate details of supervision and administration to the chief of the division of wheat research and marketing, or to the commissioner of agriculture.

History: En. Sec. 3, Ch. 314, L. 1967.

Collateral References
Agriculture⊂⊃2.

3 C.J.S. Agriculture § 6.
3 Am. Jur. 2d 794-797, Agriculture, §§ 34-36.

3-2904. Definitions. As used in this act, unless the context otherwise requires:

(1) "Committee" means the administrative committee hereby established to be known as the Montana wheat research and marketing committee;

(2) "Grower" means any landowner personally engaged in growing wheat, a tenant of the landowner personally engaged in growing wheat, or both the owner and the tenant jointly; and includes a person, partnership, association, corporation, co-operative, trust, sharecropper, and any and all other business units, devices, and arrangements;

(3) "First purchaser" means any person, public or private corporation, association, or partnership, buying, accepting for shipment, or otherwise acquiring the property in or to wheat from a grower, and shall include a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower, where the actual or constructive possession of such wheat is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim;

(4) "Commercial channels" means the sale of wheat for any use, when sold to any commercial buyer, dealer, processor, co-operative, or to any person, public or private, who resells any wheat or product produced from wheat; and

(5) "Sale" includes any pledge or mortgage of wheat, after harvest, to any person, public or private.

History: En. Sec. 4, Ch. 314, L. 1967.

3-2905. Governor to appoint administrative committee—duties—composition — districts — nominees — term of office — political affiliations. (1) The governor of the state of Montana shall appoint an administrative committee to be known as the Montana wheat research and marketing committee, which committee shall:

(a) advise and direct the chief executive officer of the division of wheat research and marketing; and

(b) be primarily responsible for the enforcement and application of this act; and

(c) be responsible for conducting basic researches and market development and other programs of the division and its objectives as herein stated.

(2) The administrative committee shall be composed of:

(a) seven (7) members each of whom is a citizen of Montana, and each of whom derives a substantial portion of his income from growing wheat in Montana,

(b) three (3) ex officio members (who shall not vote upon any decisions, orders or regulations of the administrative committee):

(i) the commissioner of the department of agriculture,

(ii) the dean of agriculture of Montana state university,

(iii) a representative of the grain trade in Montana who is elected by majority vote of the seven (7) appointed members of the administrative committee, and who shall serve at the pleasure of the administrative committee.

(3) One member of the administrative committee shall be appointed from each of the following districts, and shall be a resident of, and shall have farming operations in the district from which appointed:

District I. consisting of Daniels, Sheridan and Roosevelt counties.

District II. consisting of Valley, Phillips, Blaine and Hill counties.

District III. consisting of Liberty, Toole, Glacier and Pondera counties.

District IV. consisting of Chouteau and Teton counties.

District V. consisting of Lewis and Clark, Cascade, Judith Basin, Fergus, Petroleum, Meagher, Broadwater, Wheatland, Golden Valley and Musselshell counties.

District VI. consisting of Big Horn, Yellowstone, Stillwater, Carbon, Sweet Grass, Park, Gallatin, Madison, Jefferson, Silver Bow, Beaverhead, and all counties lying west of the continental divide.

District VII. consisting of Garfield, McCone, Rosebud, Richland, Dawson, Wibaux, Prairie, Carter, Custer, Fallon, Powder River, and Treasure counties.

(4) A list of nominees for appointment to the administrative committee may be submitted to the governor by the Montana farmers union, Montana farm bureau, Montana grange, and the Montana grain growers association. Each nominee must be from the district for which the appointment will be made. The first list of nominees shall be submitted in less than thirty-one (31) days after the effective date of this act and thereafter names of nominees shall be submitted in less than ninety-one (91) days prior to the expiration of any committeeman's term.

(5) Committee members shall be appointed for a term of five (5) years, except that the terms of office of the committee members first appointed shall be as follows:

District I for four (4) years;
District II for five (5) years;
District III for five (5) years;
District IV for one (1) year;
District V for two (2) years;
District VI for four (4) years;
District VII for three (3) years.

(6) No more than four (4) appointed members of the committee may be of the same political party. Members appointed to fill unexpired terms shall be appointed for the remainder of the unexpired term.

History: En. Sec. 5, Ch. 314, L. 1967.

Cross-Reference
Effective date of this act, sec. 3-2920.

3-2906. Compensation — per diem. Members of the administrative committee shall receive no salary, but shall be paid, from the wheat research and marketing account in the revolving fund, a per diem of twenty

dollars ($20) for each day they are actually and necessarily engaged in the transaction of official business under this act, together with their actual and necessary expenses incurred while on official business.

History: En. Sec. 6, Ch. 314, L. 1967.

3-2907. Removal from office—cause—procedure. Any member of the administrative committee shall be removable by the governor for malfeasance, misfeasance or neglect of duty. No removal proceedings may be entertained or prosecuted except upon written charges, duly verified. The member shall first be given a copy of the written charges against him upon any one or more of said grounds at least ten (10) days in advance of any hearing upon the charges, and the member shall be accorded a full and fair public hearing before the governor with right to counsel and to witnesses in his behalf. Any member of the administrative committee:

(1) ceasing to be a resident of the state of Montana,

(2) ceasing to live in the district from which he was appointed, or

(3) ceasing to be actually engaged in growing wheat in said state or district,

shall be automatically disqualified from continuing as a member by the happening of any one or more of such events. If the member refuses to recognize his disqualification, the refusal shall constitute cause for removal, and his office as committee member shall become vacant.

History: En. Sec. 7, Ch. 314, L. 1967.

3-2908. Election of chairman—time of meetings. At the first meeting of the administrative committee, it shall elect a chairman from among its members. The committee shall meet at least once every three (3) months and at such other times as called by the chairman or by any three (3) members of the committee.

History: En. Sec. 8, Ch. 314, L. 1967.

3-2909. Powers of administrative committee. The administrative committee shall have the power to:

(1) Adopt rules and regulations as are necessary and advisable to effect efficient administration of this act;

(2) Promptly and effectively to enforce the provisions of this act; and

(3) To conduct adequate, intensive and timely research into the production, marketing and uses of wheat in all phases and relationships.

(4) Enter into written contracts or agreements with recognized research agencies, public or private, within or without the state of Montana, for the purposes of, but not limited to, improving wheat quality, increasing the efficiency of production, developing marketing knowledge, developing markets and determining new uses for wheat and developing alternative crops for wheat.

None of the duties, authorities and powers set forth in this act and delegated to the administrative committee shall be construed to mean or permit participation in state or federal political action.

History: En. Sec. 9, Ch. 314, L. 1967.

3-2910. Establishment of administrative office—expense. The department of agriculture shall upon recommendation of the administrative com-

mittee, establish an administrative office in the state of Montana at such place as may be suitable for the efficient administration of this act; the expense of staffing and maintaining the same to be an expense of administration under this act.

History: En. Sec. 10, Ch. 314, L. 1967.

3-2911. Annual assessment on wheat grown. There is hereby levied an annual assessment of two and one-half (2½) mills per bushel upon all wheat grown in the state of Montana, and sold through commercial channels beginning August 20, 1967. The assessment is hereby levied and imposed on each grower of wheat in the state of Montana unless a grower or his agent at the time of transaction shall request in writing that no assessment be made:

(1) in the case of sale of wheat, at the time of any sale of wheat by a grower, and shall be collected by the first purchaser of the wheat from the grower at the time of each settlement for wheat purchased, or

(2) in the case of a pledge or mortgage of wheat as security for a loan under any federal price support program, the assessment shall be collected by deducting the amount thereof from the proceeds of such loan at the time the loan is made by the agency or person making the loan.

The assessment levied under the provisions of this act, shall be deducted and collected as provided by this act, whether such wheat is stored in this or any other state. The assessment shall attach to each transaction, but no grower shall be subject to assessment more than once irrespective of the number of times it shall be the subject of a sale, pledge, mortgage or other transaction, the assessment being imposed and attaching on the initial sale, pledge, mortgage or other transaction in which the wheat grower parts with title to the wheat, or creates some interest therein in a pledgee, mortgagee or other person.

History: En. Sec. 11, Ch. 314, L. 1967.

3-2912. Sale of wheat to federal government—inapplicability of assessment. The assessment herein levied and imposed by the provisions of this act, shall not apply to the sale of wheat to the federal government, for ultimate use or consumption by the people of the United States, where the state of Montana is prohibited from imposing such tax by the constitution of the United States and valid laws enacted pursuant thereto.

History: En. Sec. 12, Ch. 314, L. 1967.

3-2913. Buyer's delivery of invoice to grower—form—filing of sworn statement—payment of assessment. (1) The purchaser of the wheat at the time of settlement therefor on sale, or the pledgee or mortgagee or other lender at the time of its loan or advance, shall make and deliver separate invoices for each purchase to the grower. Such invoices shall be on forms approved by the administrative committee showing

(a) the name and address of the grower and seller,

(b) the name and address of the purchaser or the lender,

(c) the number of bushels of wheat sold, mortgaged or pledged,

(d) the date of the purchase, mortgage or pledge and the amount of assessment collected and remitted to the commissioner of agriculture.

(2) The purchaser, mortgagee, or pledgee shall deliver to and have on file with the wheat research and marketing division of the department of agriculture, on forms prescribed by the division, by the twentieth (20th) day of each calendar month following any calendar month in which purchaser shall purchase wheat of a grower or in which a lender makes any loan or advance on wheat of a grower beginning on August 20 in the year 1967, a sworn statement of the number of bushels of wheat purchased in Montana or the number of bushels mortgaged or pledged, or otherwise transferred or liened as security for a loan, during the preceding calendar month. At the time the sworn statement is filed, the purchaser or lender shall pay and remit to the commissioner the assessment provided for in this act for deposit in the wheat research and marketing account in the revolving fund.

(3) The statement referred to in subsection (1) [(2)] of this section, shall be legibly written and shall be entirely free of any corrections or erasures on the face thereof. Any person who shall alter any part of any statement shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as is provided herein.

History: En. Sec. 13, Ch. 314, L. 1967.

3-2914. Commissioner to file annual report with governor—transmittal of copies to legislature. The commissioner of agriculture and the chief of the wheat research and marketing division shall make an annual report, at least thirty (30) days prior to January 1 of each year, showing all income to and expenses and expenditures of the wheat research and marketing division in comprehensive detail. The report shall be filed with the governor, and shall be open to inspection of the public during office hours and may be published by order of the division. A duplicate original of each annual report made during any recess of the legislative assembly shall be transmitted by the commissioner of agriculture directly to the president of the senate and to the speaker of the house of representatives within five (5) days after the convening of each biennial session of the legislative assembly.

History: En. Sec. 14, Ch. 314, L. 1967.

3-2915. Receipt of gifts, grants or donations for research purposes. The Montana wheat research and marketing division is hereby authorized to receive any gifts, grants or donations for any research of scientific inquiries conducted under authority of this act, and to use and expend the same in compliance with the conditions, if any, of such grants, gifts and donations, provided such conditions are valid under the laws of the state of Montana, and in aid of the purposes of this act.

History: En. Sec. 15, Ch. 314, L. 1967.

3-2916. Official bonds of division chief, deputy or assistant. The chief of the Montana wheat research and marketing division and any deputy or assistant participating in the handling of assessment receipts or

other receipts by or for the division, shall be bonded for the faithful and safe handling and accounting for such receipts while in their hands and for faithful compliance with the provisions of this act.

History: En. Sec. 16, Ch. 314, L. 1967.

3-2917. Research and marketing revolving account—sources—use—expenditures. (1) There is hereby established an account in the revolving fund to be known as the wheat research and marketing revolving account. There shall be placed in the account:

(a) the proceeds of all millage levies made, paid and collected under this act, and

(b) the proceeds from all gifts, grants or donations to the department of agriculture for the use of the researches conducted by the division of wheat research and marketing.

(2) The account shall be maintained for the use of the wheat research and marketing division of the department of agriculture and shall be separate and apart from all other accounts of the department.

(3) There shall be transferred to the general fund one per cent (1%) of all the moneys collected.

(4) There shall be paid out of this account claims for expenditures under this act as are approved by the commissioner of agriculture and the state controller.

History: En. Sec. 17, Ch. 314, L. 1967.

3-2918. Contracts for carrying out research. The Montana wheat research and marketing committee shall not set up research units or agencies of its own but shall co-operate and is hereby empowered to enter into contracts with Montana state university and other lawful and proper local, state, or national organizations, public or private, in carrying out all phases of research and marketing contemplated by this act.

History: En. Sec. 18, Ch. 314, L. 1967.

3-2919. Violations of act—penalty. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and shall, upon conviction, be fined not less than twenty-five dollars ($25) nor more than five hundred dollars ($500).

History: En. Sec. 19, Ch. 314, L. 1967.

3-2920. Duration of act—expiration—reversion of remaining funds. This act shall be in full force and effect from August 20, 1967 for a period of seven (7) years. If this act is not renewed through legislative action to extend beyond seven (7) years, any money remaining that has been collected under this act shall revert to the Montana state university to be used exclusively for wheat research.

History: En. Sec. 21, Ch. 314, L. 1967.

TITLE 4

ALCOHOLIC BEVERAGES

Chapter 1. State Liquor Control Act of Montana—licensing—sale of alcoholic beverages by state liquor stores, 4-101 to 4-173.
2. State Liquor Control Act of Montana (continued)—interdiction and other enforcement provisions—finance—miscellaneous, 4-201 to 4-241.
3. Montana Beer Act—licensing sale of beer under supervision of state liquor control board, 4-301 to 4-358.
4. Montana Retail Liquor License Act—sales by licensees of board, 4-401 to 4-441.
5. Identification cards, 4-501 to 4-514.

CHAPTER 1

STATE LIQUOR CONTROL ACT OF MONTANA—LICENSING—SALE OF ALCOHOLIC BEVERAGES BY STATE LIQUOR STORES

Section 4-101. Citation of State Liquor Control Act—declaration of policy—subject matters of regulation under act.
4-102. Definitions.
4-103. Divisions of act.
4-104. Montana liquor control board—creation—qualifications—term.
4-105. Liquor control board—compensation—meetings.
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4-140. Application of act.
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4-142. Local option law—petition—time for election.
4-143. Notice of election.
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4-145. Election, how held.
4-146. Dealing in intoxicating liquors prohibited if majority of vote against sale.

4-147. No election more than once in two years.
4-148. Sale of liquors prohibited.
4-149. Election, how contested.
4-150. Sale of liquor unlawful, when—foreign substance in liquor forbidden—possession of liquor, when unlawful.
4-151. Liquor dispensed only in accordance with act.
4-152. Place and time of selling liquor.
4-153. Board members not to be interested in liquor sales—unlawful to give or receive gift, commission or remuneration.
4-154. Transfer of liquor except as provided by act unlawful.
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4-156. Consumption of liquor on druggists' premises prohibited.
4-157. Repealed.
4-158. Liquor container must have been sealed with official seal—powers and duties of peace officers.
4-159. Persons not to consume liquor or be intoxicated in public places.
4-160. Sales to intoxicated persons prohibited.
4-161. Age limit for sale of liquor.
4-162. Repealed.
4-163. Procuring liquor for interdicted person forbidden.
4-164. Interdicted persons—presence on liquor store or beer licensee's premises forbidden.
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4-166. Repealed.
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4-168. Repealed.
4-169. Liquor in hotels—restrictions on.
4-170. Unlawful to canvass for orders for sale or purchase of liquor—advertising liquor or beer, when prohibited—exceptions.
4-171. Sale of material branded as liquor forbidden, when.
4-172. Bottle clubs prohibited.
4-173. Violation—penalty—abatement as nuisance.

4-101. (2815.60) **Citation of State Liquor Control Act—declaration of policy—subject matters of regulation under act.** This act may be cited as the "State Liquor Control Act of Montana." It is hereby declared to be the policy of the state of Montana to effectuate and ensure the entire control of the manufacture, sale and distribution of liquor within the state of Montana as that term is defined in section 4-102, Revised Codes of Montana, 1947, as amended by chapter 209, laws of the thirty-first legislative assembly of Montana, in, and subject to, the authority of the state of Montana through the Montana liquor control board, in accordance with the provisions of the State Liquor Control Act of Montana (Title 4, chapter 1, sections 4-101 through 4-171, inclusive, Revised Codes of Montana, 1947, as amended or supplemented) and in accordance with the provisions of the Retail Liquor License Act (Title 4, chapter 4, sections 4-401 through 4-441, inclusive, Revised Codes of Montana, 1947, as amended or supplemented).

It is hereby declared to be the policy of the state of Montana to effectuate and ensure that the control and regulation by the state of Montana of the manufacture, sale and distribution of beer, as that term is defined in the Montana Beer Act (Title 4, chapter 3, sections 4-301 through 4-356, inclusive, Revised Codes of Montana, 1947, as amended or supplemented) and regulated thereby, and containing four per centum (4%) of alcohol by weight or less, and the incidents of such manufacture, sale and distribution of such beer, shall continue subject to, and be effectuated exclusively under, the provisions of the Montana Beer Act, as amended or supplemented, and not under the provisions of the State Liquor Control Act of

Montana. The terms "beer" and "malt liquor" whenever used as a subject of regulation and control by and under the State Liquor Control Act of Montana shall refer to, and be construed as applicable only to, beer, ale, porter, stout or other malt liquors containing more than four per centum (4%) of alcohol by weight, and such beer, ale, porter, stout and malt liquors containing more than four per centum (4%) of alcohol by weight, are hereby classified and defined as "liquor" and shall be subject to regulation and control under the terms of the State Liquor Control Act of Montana as amended or supplemented, and not under the provisions of the Montana Beer Act, as amended or supplemented. The said acts herein referred to shall be deemed an exercise of the police power of the state, in, and for the protection, of the welfare, health, peace, morals and safety of the people of the state and their provisions shall be construed for the accomplishment of such purposes.

History: En. Sec. 1, Ch. 105, L. 1933; amd. Sec. 1, Ch. 165, L. 1951.

Compiler's Notes

Sections 4-123 to 4-132, 4-157, 4-162, 4-165, 4-166, and 4-168, included in the reference in the first paragraph to sections 4-101 through 4-171, were repealed by Sec. 17, Ch. 154, Laws 1965. Section 4-155 was repealed by Sec. 1, Ch. 53, Laws 1949.

Sections 4-426 and 4-427, included in the reference in the first paragraph to sections 4-401 through 4-441, were repealed by Sec. 2, Ch. 67, Laws 1955.

Sections 4-316, 4-331, 4-334 to 4-336 and 4-343, included in the reference in the second paragraph to sections 4-301 through 4-356, were repealed by Sec. 12, Ch. 166, Laws 1951. Section 4-340 was repealed by Sec. 2, Ch. 55, Laws 1955.

Constitutionality Upheld

The constitutionality of the State Liquor Control Act of Montana, as against the objection that the act violated the provisions of section 23, article V, and section 1, article XII of the constitution was upheld in State v. Driscoll, 101 M 348, 54 P 2d 571.

Act Is Exercise of Police Power

The State Liquor Control Act of Montana, regulating the sale of intoxicating liquors and providing for a system of state stores for their sale and distribution, is an exercise of a governmental function within the police power of the state. State v. Andre, 101 M 366, 371, 54 P 2d 566.

Act Is Not for Raising Revenue

The State Liquor Control Act of Montana, whose main purpose is to regulate the manufacture and sale of intoxicating liquor but which incidentally results in profits to the state from the operation of state liquor stores, does not violate section 32, article V of the constitution, which provides that bills for raising revenue must originate in the house of representatives. State v. Driscoll, 101 M 348, 365, 54 P 2d 571.

Commerce Clause of Federal Constitution Not Violated

The State Liquor Control Act of Montana, in effect prohibiting the importation of intoxicating liquors from other states, does not violate the commerce clause of the federal constitution, in view of section 2 of the twenty-first amendment to that constitution prohibiting the transportation or importation into any state of intoxicating liquor in violation of the laws thereof. State v. Andre, 101 M 366, 375, 54 P 2d 566.

Construction

This act, before 1951 amendment, and the Montana Beer Act are in pari materia and must be construed together, and together with the amendments thereto are all one homogeneous and consistent body of law. Fletcher v. Paige, 124 M 114, 220 P 2d 484, 485, 19 ALR 2d 1108.

Validity of Act Upheld

The State Liquor Control Act of Montana is not invalid as providing revenue for the support and maintenance of the state by means other than the taxation of property or a license tax. State v. Driscoll, 101 M 348, 361, 54 P 2d 571.

References

State v. Wiles, 98 M 577, 41 P 2d 8; State ex rel. Nagle v. Naughton, 103 M 306, 319, 63 P 2d 123; Carey v. McFatridge, 115 M 278, 292, 142 P 2d 229; Stephens v. City of Great Falls, 119 M 368, 175 P 2d 408; Alpha Industries, Inc. v. Montana Liquor Control Board, 146 M 23, 403 P 2d 606; State ex rel. City of Libby v. Haswell, 147 M 492, 414 P 2d 652.

Collateral References

Intoxicating Liquors⊂⊃6, 7, 13.
48 C.J.S. Intoxicating Liquors § 29.

Effect of state liquor sales on municipal power to impose occupation license or tax for revenue. 6 ALR 2d 737.

State power to regulate price of intoxicating liquors. 14 ALR 2d 699.

Validity and construction of measure prohibiting retail alcoholic beverage seller from furnishing free food or drink. 66 ALR 2d 758.

Validity and construction of statute or ordinance requiring or prohibiting posting or other publication of price by liquor dealer. 89 ALR 2d 950.

Power to promulgate regulation forbidding employee or entertainer from drinking or mingling with patrons at bar or tavern, or soliciting drinks from them. 99 ALR 2d 1222.

4-102. (2815.61) **Definitions.** The following words and phrases used in this act shall take the following interpretations:

(a) "Board" means the board created by this act under the name of "Montana liquor control board";

(b) "Club" shall mean any association of individuals for purposes of mutual entertainment and convenience and shall include the premises occupied or used for any such purpose;

(c) "Club license" means a club license granted to a club to sell beer under section 4-133, and "club licensee" means a club which has been granted a license under said section;

(d) "Dentist" means a person duly licensed to practice dentistry under the laws of the state of Montana;

(e) "Druggist" means a duly licensed pharmacist under the laws of the state of Montana;

(f) "State liquor store" means a state liquor store established under this act;

(g) "Hotel" shall mean any place where the public may for a consideration, obtain sleeping accommodations, with or without meals;

(h) "Interdicted person" means a person to whom the sale of liquor is prohibited by an order under this act;

(i) "Liquor" or "liquors" means and includes any alcoholic, spirituous, vinous, fermented, malt or other liquor which contains more than one per centum (1%) of alcohol by weight, but shall not mean or include beer as that term is defined in the Montana Beer Act by subsection (b) of section 4-302 and as permitted to be manufactured and/or sold or transported in and into this state or possessed therein in the manner and under the conditions prescribed in the "Montana Beer Act."

(j) "Municipality" means any city, town, village, hamlet, municipal district (exclusive of any hamlet situate therein), and includes the council of the municipality; and "municipal" shall have a like meaning;

(k) "Member of a club" means a person who, whether as a charter member or admitted in accordance with the bylaws or rules of a club, has become a member thereof, who maintains his membership by the payment of his regular periodic dues in the manner provided by such rules or bylaws and whose name and address are entered on the list of members supplied to the board at the time of the application for a club license under this act, or if admitted thereafter, within ten days after his admission;

(l) "Package" means any container or containers, or receptacle or receptacles used for holding liquor;

(m) "Physician" means a person duly licensed to practice medicine in the state Montana;

(n) "Prescription" means a memorandum in the form prescribed by the regulations made under the authority of this act, signed by a physician, and given by him to a patient for the obtaining of liquor pursuant to this act for use for medicinal purposes;

(o) "Public place" includes any place, building, or conveyance to which the public has or is permitted to have access and any place of public resort;

(p) "Residence" means a building, or part of building, or tent, where a person resides but shall not include any part of a building which part is not actually and exclusively used as a private residence, nor any part of a hotel other than a private guest room, nor a club or any part thereof, nor any place from which there is access to a club or hotel except through a street or lane or other open and unobstructed means of access, nor any portion of a building used in part for business purposes unless such portion is separated from the part used for business purposes by a wall or walls having no doors or other means of access opening into such part used for business purposes;

(q) "Regulations" means regulations made by the Montana liquor control board;

(r) "Sale" and "sell" include exchange, barter, and traffic; these terms also include the selling or supplying or distributing, by any means whatsoever, of liquor or of any liquid known or described as beer or near-beer, or by any name whatever commonly used to describe malt or brewed liquor, by any partnership or by any society, association, or club, whether incorporated or unincorporated, and whether heretofore or hereafter formed or incorporated, to any partnership, society, association or club or to any member thereof;

(s) "Spirits" means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution and includes, among other things, brandy, rum, whisky, and gin;

(t) "Vendor" means a person appointed as a vendor under this act;

(u) "Wine" means any alcoholic beverage obtained by the fermentation of the natural sugar contents of fruits (grapes, apples, etc.); or other agricultural products containing sugar (honey, milk, etc.);

(v) "Malt liquor" means any beverage, other than beer, obtained by the alcoholic fermentation of an infusion or decoction of barley, malt and hops in drinkable water.

History: En. Sec. 2, Ch. 105, L. 1933; amd. Sec. 1, Ch. 209, L. 1949; amd. Sec. 2, Ch. 154, L. 1965.

Effect of 1949 Amendment

The 1949 amendment to this section clarifying the distinction between liquor and beer did not have the effect of impliedly repealing the provision of section 4-170 which prohibits the advertising of beer. Fletcher v. Paige, 124 M 114, 220 P 2d 484, 19 ALR 2d 1108.

References

State ex rel. City of Libby v. Haswell, 147 M 492, 414 P 2d 652.

Collateral References

Intoxicating Liquors⚿1.
48 C.J.S. Intoxicating Liquors § 1.

4-103. (2815.62) **Divisions of act.** This act is divided into six parts. Part I relates to the creation of a board to administer this act and the

powers and functions of the board. Part II relates to the establishment of state stores and the keeping and selling of liquors. Part III relates to the formation of "local option areas" and the holding of election therein. Part IV relates to prohibitions, interdiction, penalties and procedure on prosecution and on appeal. Part V relates to property acquired by the board, and the financing and accounting by the board and application of the profits. Part VI relates to general and miscellaneous matters.

History: En. Sec. 3, Ch. 105, L. 1933.

NOTE.—The parts referred to in the above section are as follows: Part I, sections 4-104 to 4-113 inclusive; Part II, sections 4-114 to 4-122, 4-133 to 4-141 inclusive; Part III, sections 4-142 to 4-149 inclusive; Part IV, sections 4-150 to 4-154, 4-156, 4-158 to 4-161, 4-163, 4-164, 4-167, 4-169 to 4-225 inclusive; Part V, sections 4-226 to 4-230 inclusive; Part VI, sections 4-232 to 4-237 inclusive.

4-104. (2815.63) **Montana liquor control board—creation—qualifications—term.** The "Montana Liquor Control Board" shall consist of five (5) members not more than three (3) of whom shall be of the same political party to be appointed by the governor, with the advice and consent of the senate, and each of said members shall have been a resident of the state of Montana for a period of five (5) years and a citizen of the United States and of the state of Montana. Each member of the Montana liquor control board shall hold office for a term of four (4) years and until his successor is appointed and qualified, provided, however, that in the appointment of the members of the first board to be appointed, under the terms of this act, one (1) of such members shall be appointed to hold office for a term of two (2) years, and two (2) of such members shall be appointed to hold office for a term of four (4) years, and the two (2) additional members of said board provided under the terms of this act shall be appointed to hold office for a term of four (4) years; and provided, further, that the members of said board may be removed from office at any time by the governor, for cause. The governor shall designate the term of service of each member first appointed, so that the term of one (1) shall end March 1, 1939, and the term of two (2) shall expire March 1, 1941. Each succeeding member shall hold his office for a term of four (4) years and until his successor shall be appointed and shall have qualified. Succeeding appointments, except when made to fill a vacancy, shall be made on or before the 31st day of January during the biennial session of the legislature, next preceding the commencement of the term for which the appointment is made.

History: En. Sec. 4, Ch. 105, L. 1933; amd. Sec. 1, Ch. 30, L. 1937; amd. Sec. 1, Ch. 243, L. 1947; amd. Sec. 1, Ch. 140, L. 1949; amd. Sec. 1, Ch. 183, L. 1951; amd. Sec. 1, Ch. 268, L. 1963.

Compiler's Note

Sections 4-104 through 4-108 were originally enacted as Sec. 4, Ch. 105, L. 1933; re-en. Sec. 2815.63, R. C. M. 1935; amd. Sec. 1, Ch. 30, L. 1937; amd. Sec. 1, Ch. 243, L. 1947. That section has been divided for more convenient reference.

References

State ex rel. Bonner v. District Court, First Judicial District, Lewis and Clark County, 122 M 464, 206 P 2d 166, 171.

Collateral References

Intoxicating Liquors⇐129.
48 C.J.S. Intoxicating Liquors § 212.

4-105. (2815.63) **Liquor control board — compensation — meetings.** Each of the members of the Montana liquor control board shall receive,

as compensation for his official services, the sum of twenty dollars ($20) per diem for each day actually engaged in the duties of his office, including his time of travel between his home and place of employment of such duties, provided, however, that the maximum amount each member of commission shall receive for per diem shall not exceed one thousand five hundred dollars ($1,500) per annum, together with the traveling expenses while away from home in the performance of the duties of his office. The board shall hold its meetings at the city of Helena or at such other places as may be designated by the board.

History: En. Sec. 4, Ch. 105, L. 1933; amd. Sec. 1, Ch. 30, L. 1937; amd. Sec. 1, Ch. 243, L. 1947; amd. Sec. 1, Ch. 140, L. 1949; amd. Sec. 1, Ch. 183, L. 1951; amd. Sec. 1, Ch. 235, L. 1957; amd. Sec. 1, Ch. 151, L. 1963.

4-106. (2815.63) **Appointment of state liquor administrator and assistant—oath of office of board members—quorum.** The board shall choose one (1) of its own members as chairman, and shall appoint a state liquor administrator, who shall not be a member of the board and who shall be ex officio the secretary of the board. The board may also, in its discretion, appoint an assistant state liquor administrator and other employees. Each member of the board shall take and file the constitutional oath of office before entering the performance of his duties. A majority of the members of the board shall constitute a quorum for the transaction of business.

History: En. Sec. 4, Ch. 105, L. 1933; amd. Sec. 1, Ch. 30, L. 1937; amd. Sec. 1, Ch. 243, L. 1947; amd. Sec. 1, Ch. 140, L. 1949; amd. Sec. 1, Ch. 183, L. 1951; amd. Sec. 11, Ch. 177, L. 1965.

Cross-Reference

Bonds of state officers and employees, sec. 6-105 et seq.

4-107. (2815.63) **General powers and duties of the board.** The board shall have the powers and duties herein specified and the administration of the State Liquor Control Act of Montana and the Montana Beer Act, including the general control, management and supervision of all state liquor stores, but the board is authorized to delegate to the state liquor administrator the general control, management and supervision of all state liquor stores, including the power to purchase supplies for same and the power to hire and discharge employees of the board, subject, however, to such regulations and restrictions as the board may impose upon the state liquor administrator.

History: En. Sec. 4, Ch. 105, L. 1933; amd. Sec. 1, Ch. 30, L. 1937; amd. Sec. 1, Ch. 243, L. 1947; amd. Sec. 1, Ch. 140, L. 1949; amd. Sec. 1, Ch. 183, L. 1951.

References

Fletcher v. Paige, 124 M 114, 220 P 2d 484, 485, 19 ALR 2d 1108; Alpha Industries, Inc. v. Montana Liquor Control Board, 146 M 23, 403 P 2d 606.

Collateral References

Right to hearing before revocation or suspension of liquor license. 35 ALR 2d 1067.

4-108. (2815.63) **Salaries of state liquor administrator and other employees—duties of assistant administrator.** The board shall fix the following salaries of its employees at such sums as it deems advisable, to wit: The salary of the state liquor administrator in a sum not exceeding eleven thousand five hundred dollars ($11,500) per year; the salary of the assistant state liquor administrator in a sum not exceeding ten thousand dollars ($10,000) per annum; the salary of the supervisor of the

accounting department not exceeding nine thousand dollars ($9,000) per annum; the salaries of the supervisors of the data processing department and the license department in a sum not exceeding seventy-five hundred dollars ($7,500) per annum each; the salary of the supervisor of the warehouse department in a sum not exceeding seven thousand dollars ($7,000) per annum; the salaries of the purchasing agent, the traffic manager, the assistant supervisor of the data processing department, the assistant supervisor of the accounting department, store auditors and field inspectors in a sum not exceeding six thousand six hundred dollars ($6,600) per annum each; the salary of a vendor of a "Class A" store in a sum not exceeding six thousand six hundred dollars ($6,600) per annum; the salary of one (1) assistant vendor of a "Class A" store in a sum not exceeding five thousand seven hundred fifty dollars ($5,750) per annum; the salary of any other employee of a "Class A" store in a sum not exceeding five thousand four hundred dollars ($5,400) per annum; the salary of a vendor of a "Class B" store in a sum not exceeding five thousand five hundred dollars ($5,500) per annum; the salary of an assistant vendor and any other employee of a "Class B" store in a sum not exceeding four thousand five hundred thirty-five dollars ($4,535) per annum; the salary or compensation of a vendor of a "Class C" store in a sum not exceeding four thousand nine hundred dollars ($4,900) per annum; the salary of an assistant vendor and any other employee of a "Class C" store in a sum not exceeding the sum of four thousand dollars ($4,000) per annum; the salary of any other employee of the board in the sum not exceeding six thousand six hundred dollars ($6,600) per year. The volume of the individual store sales shall be taken into consideration in fixing the salary of store vendors, assistant vendors and employees.

The assistant state liquor administrator shall exercise such powers and perform such duties as the board may prescribe.

History: En. Sec. 4, Ch. 105, L. 1933; amd. Sec. 1, Ch. 30, L. 1937; amd. Sec. 1, Ch. 243, L. 1947; amd. Sec. 1, Ch. 140, L. 1949; amd. Sec. 1, Ch. 183, L. 1951; amd. Sec. 2, Ch. 235, L. 1957; amd. Sec. 2, Ch. 151, L. 1963; amd. Sec. 1, Ch. 265, L. 1967.

4-109. (2815.64) **Principal office of board.** The principal office of the board shall be in the city of Helena.

History: En. Sec. 5, Ch. 105, L. 1933.

4-110. (2815.65) **State liquor administrator—oath.** The state liquor administrator, before entering upon the performance of his duties, shall take and file the constitutional oath of office and he shall devote his whole time and attention to the administration of the State Liquor Control Act of Montana and the Montana Beer Act and shall receive no other compensation from any source whatsoever, or follow no other occupation.

History: En. Sec. 6, Ch. 105, L. 1933; amd. Sec. 2, Ch. 30, L. 1937; amd. Sec. 12, Ch. 177, L. 1965.

Cross-Reference

Bonds of state officers and employees, sec. 6-105 et seq.

4-111. (2815.66) **Term of office of state liquor administrator and assistant.** The state liquor administrator and the assistant state liquor ad-

ministrator, if one is appointed by the board, shall hold office during the pleasure of the board.

History: En. Sec. 7, Ch. 105, L. 1933; amd. Sec. 3, Ch. 30, L. 1937.

4-112. (2815.67) **Functions, powers and duties of board.** The board shall have the following functions, duties and powers:

(a) To buy, import, and have in its possession for sale, and sell, liquors, in the manner set forth in this act;

(b) To control the possession, sale and delivery of liquors in accordance with the provisions of this act;

(c) To determine the municipalities within which state liquor stores shall be established throughout the state, and the situation of the stores within every such municipality;

(d) To lease, furnish and equip any building or land required for the operation of this act;

(e) To buy or lease all plant and equipment it may consider necessary and useful in carrying into effect the objects and purposes of this act;

(f) To appoint vendors, and also every officer, inspector, clerk or other employee, required for the operation or carrying out of this act, and to dismiss the same, fix their salaries or remuneration, assign them their title, define their respective duties and powers, and to engage the service of experts and persons engaged in the practice of a profession, if deemed expedient;

(g) To determine the nature, form and capacity of all packages to be used for containing liquor kept or sold under this act; provided that all spirituous and vinous liquors shall be purchased and sold only in bottled containers in the original packages, and not in barrels or bulk, it being the intent and purpose of this act to prevent the rectification or dilution of such liquors;

(h) To grant and issue licenses under and in pursuance to this act;

(i) Without in any way limiting, or being limited by the foregoing, to do all such things as are deemed necessary or advisable by the board for the purpose of carrying into effect the provisions of this act, or the regulations made thereunder.

History: En. Sec. 8, Ch. 105, L. 1933; amd. Sec. 3, Ch. 154, L. 1965.

Legality of Contract of Purchase—Partial Payment

In an original declaratory judgment action by the state treasurer to determine his duties with regard to a $150,000 draft drawn upon him by the state liquor control board on funds deposited with him and raised by the board through participation of 127 state retail dealers to cover a down payment on 15,000 cases of liquor to meet a war emergency shortage, the state to take its mark-up and sell the liquor to the dealers, held, that the purchase was made within the board's power under this section, nothing therein qualifying or limiting its right or method of purchase. Carey v. McFatridge, 115 M 278, 289, 142 P 2d 229.

References

Fletcher v. Paige, 124 M 114, 220 P 2d 484, 485, 19 ALR 2d 1108; Alpha Industries, Inc. v. Montana Liquor Control Board, 146 M 23, 403 P 2d 606.

Collateral References

Intoxicating Liquors⇐7, 15.

48 C.J.S. Intoxicating Liquors § 33.

30 Am. Jur. 368, Intoxicating Liquors, § 217 et seq.

4-113. (2815.68) **Regulations may be made by board—scope of regulations.** (1) The board may make such regulations, not inconsistent with this act, as to the board seem necessary, for carrying out the provisions of this act, and for the efficient administration thereof.

(2) Without thereby limiting the generality of the provisions contained in subsection (1) hereof, it is declared the power of the board to make regulations in the manner set out in that subsection shall extend to and include the following:

(a) Regulating the equipment and management of state stores and warehouses in which liquor is kept or sold and prescribing the books and records to be kept therein;

(b) Prescribing the duties of the officers, clerks and servants of the board, and regulating their conduct while in the discharge of their duties;

(c) Governing the purchase of liquor and the furnishing of liquor to state stores established under this act;

(d) Determining the classes, varieties and brands of liquor to be kept for sale at any state store;

(e) Prescribing, subject to this act, the days and hours during which state liquor stores and hotels, and clubs licensed to sell beer under this act shall be kept open for the sale of liquor;

(f) Providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each class, variety or brand of liquor kept for sale under this act;

(g) Prescribing an official serially numbered seal which shall be attached to every package of liquor sold or sealed under this act;

(h) Prescribing forms to be used for the purpose of this act or of the regulations made thereunder, and the terms and conditions in permits and licenses issued and granted under this act;

(i) Prescribing the kinds and quantities of liquor which may be purchased under permits of any class, including the quantity which may be purchased at any one time or within any specified period of time;

(j) Prescribing the form of records of purchase of liquor, and the reports to be made thereon to the board, and providing for inspection of the records so kept;

(k) Prescribing the manner of giving and serving notices required by this act or the regulations thereunder;

(l) Prescribing the fees payable in respect of permits and licenses issued under this act for which no fees are prescribed in this act, and prescribing the fees for anything done or permitted to be done under the regulations made thereunder;

(m) Prescribing, subject to the provisions of this act, any advertisement of the application, if required by the board and the conditions and qualifications necessary for the obtaining of club licenses and the books and records to be kept and the returns to be made by clubs, and the number of licensed clubs in any municipality, and providing for the inspection of clubs;

(n) Prescribing, subject to the provisions of this act, the conditions and qualifications necessary for the obtaining of a beer license, and the books and records to be kept and the returns to be made by the licensees

and the number of such licensed premises in any municipality and providing for the inspection of such licensed premises;

(o) Specifying and describing the place and the manner in which liquor may be lawfully kept or stored;

(p) Specifying and regulating the time and periods when, and the manner, methods and means by which, vendors and brewers shall deliver liquor under this act, and the time and periods when, and the manner, methods and means by which liquor, under this act, may be lawfully conveyed or carried;

(q) Governing the conduct, management and equipment of any premises licensed to sell beer under this act;

(r) Subject to this act, to make regulations respecting the sale and consumption of beer in a club, holding a club license;

(s) Providing for the imposition and collection of the tax to be collected or levied under section 4-147 [4-317], and making regulations respecting returns to be made by a brewer, and respecting the accounting and payment, by a brewer to the board, of the tax to be collected by him under said section 4-147 [4-317].

(3) Whenever it is provided in this act that any act, matter or thing, may be done, if permitted or authorized by the regulations, or may be done in accordance with the regulations or as provided by the regulations, the board, subject to the restrictions set out in subsection (1) hereof, shall have the power to make regulations respecting such act, matter or thing.

History: En. Sec. 9, Ch. 105, L. 1933; amd. Sec. 1, Ch. 43, L. 1965; amd. Sec. 1, Ch. 154, L. 1965.

Compiler's Note

The bracketed references to section 4-317 were inserted by the compiler. The references to "Section 42 of this Act" in section 9 (2)(u) of Chapter 105, Laws of 1933 appear to be erroneous. Section 42 of the 1933 Act is compiled as section 4-147, relating to the limitation on local option elections.

Judicial Notice of Regulations

The supreme court will not take judicial notice of rules and regulations promulgated by the liquor control board in the administration of the State Liquor Control Act. State v. Andre, 101 M 366, 368, 54 P 2d 566.

Rationing System Did Not Invalidate Agreement with Dealers on Additional Liquor Subscribed

Board's agreement with retail liquor dealers whereunder any of them, advancing $10 a case toward enabling the board to make an advance payment on a quantity offered for sale by a distiller, were entitled to purchase the quantity subscribed for in addition to the allotment made to them during the war emergency, was not invalidated by the board's rationing system, since under this section it may establish and amend and alter its system either directly or by lawful transactions with exception of discrimination among holders of any class of permits. Carey v. McFatridge, 115 M 278, 291, 142 P 2d 229.

References

Fletcher v. Paige, 124 M 114, 220 P 2d 484, 485, 19 ALR 2d 1108; Alpha Industries, Inc. v. Montana Liquor Control Board, 146 M 23, 403 P 2d 606.

Collateral References

Intoxicating Liquors⇨7.
48 C.J.S. Intoxicating Liquors § 33.

4-114. (2815.69) **Establishment of state liquor stores—hours—kinds and prices of liquor.** The board shall establish and maintain at the county seats and such other places as the board deems advisable, one or more stores to be known as "state liquor stores," for the sale of liquor in accordance with the provisions of this act and the regulations made thereunder;

the stores shall be classified according to the volume of business which each store does each fiscal year; the volume of business to be used in figuring each store's classification shall be the volume of business done by the store to be classified during the immediate past fiscal year; stores shall be classified as follows: stores having done a business of four hundred and fifty thousand dollars ($450,000) or over during the immediate past fiscal year shall be "Class A" stores; stores having done a business of one hundred and forty thousand dollars ($140,000) and up to four hundred and fifty thousand dollars ($450,000) during the immediate past fiscal year shall be "Class B" stores; and all stores having done a business of less than one hundred and forty thousand dollars ($140,000) during the immediate past fiscal year shall be "Class C" stores; in opening new stores the board shall estimate the volume of business which said store will do the first year and classify said store according to the estimate of business; the board shall employ the necessary help to operate said stores and shall designate the duties to be performed by the employees; the board may, from time to time, fix the prices at which the various classes, varieties and brands of liquor may be sold, and prices shall be the same at all state stores. Such state liquor stores shall be and remain open during such period of the day as the board shall deem advisable, provided, however, that such stores shall be closed for the transaction of business on Sundays, legal holidays, and election days.

History: En. Sec. 10, Ch. 105, L. 1933; amd. Sec. 4, Ch. 30, L. 1937; amd. Sec. 1, Ch. 237, L. 1947; amd. Sec. 1, Ch. 162, L. 1949.

Collateral References

Intoxicating Liquors⇐128.
48 C.J.S. Intoxicating Liquors § 211.

4-115. (2815.70) **Vendor—appointment—duties.** The sale of liquor at each state liquor store shall be conducted by a person appointed under this act to be known as a "vendor," who shall, under the directions of the board, be responsible for the carrying out of this act, and the regulations made thereunder, so far as they relate to the conduct of such store and the sale of liquor thereat.

History: En. Sec. 11, Ch. 105, L. 1933.

4-116. (2815.71) **Provisions concerning sale of liquor and beer by vendors.** (1) A vendor may sell to any person such liquor as that person is entitled to purchase in conformity with the provisions of this act and the regulations made thereunder.

(2) Before the vendor shall make delivery of any liquor, other than beer, sold pursuant to this section, he shall—

(a) have first received an order in writing, dated and signed by the purchaser, setting out the kind and quantity of the liquor ordered; and

(b) have been paid the purchase price in cash.

(3) A vendor may, in accordance with this act, and the regulations made thereunder, sell and deliver beer provided that no delivery of beer sold under the provisions of this section shall take place until the purchaser has paid for the same in the manner prescribed in the regulations under this act.

History: En. Sec. 12, Ch. 105, L. 1933; amd. Sec. 4, Ch. 154, L. 1965.

Partial Payment before and Final Payment on Delivery Not Prohibited

In an original declaratory judgment action by the state treasurer to determine his duties with regard to a $150,000 draft drawn upon him by the state liquor control board on funds deposited with him and raised by the board through participation of 127 state retail dealers to cover a down payment on 15,000 cases of liquor to meet a war emergency shortage, the state to take its mark-up and sell the liquor to the dealers, held, that this section was not violated by dealers making partial payment prior to, and final payment upon, delivery. Carey v. McFatridge, 115 M 278, 291, 142 P 2d 229.

Collateral References

Intoxicating Liquors⇨15.

48 C.J.S. Intoxicating Liquors § 39.

30 Am. Jur. 396, Intoxicating Liquors, § 267 et seq.

4-117. No reduction for quantity sales of liquor. No reductions shall be made by the Montana liquor control board for sales of liquor in quantity.

History: En. Sec. 1, Ch. 185, L. 1943.

4-118. (2815.72) **Sale by vendor on physician's prescription.** A vendor may sell liquor to any person upon the prescription of a physician given pursuant to this act, but no more than one sale and one delivery shall be made on any one prescription.

History: En. Sec. 13, Ch. 105, L. 1933.

4-119. (2815.73) **Containers to be sealed with official seal—opening package on liquor store premises forbidden.** No spirits or wine shall be sold to any purchaser, except in a package, sealed with the official seal prescribed by this act, which package shall not be opened on the premises of a state store.

History: En. Sec. 14, Ch. 105, L. 1933.

4-120. (2815.74) **Liquor not to be consumed on premises of state store.** No officer, clerk or servant of the board, employed in the state store, shall allow any liquor to be consumed on the premises of a state store, nor shall any person consume any liquor on such premises.

History: En. Sec. 15, Ch. 105, L. 1933.

4-121. (2815.75) **When sales of liquor forbidden.** No sale or delivery of liquor shall be made on or from the premises of any state liquor store, nor shall any store be open for the sale of liquor

(a) on any holiday;

(b) on any day on which polling takes place at any national or state election held in the electoral district in which the store is situated;

(c) on any day on which polling takes place at any municipal election held in the municipality in which the store is situated;

(d) during such other period and on such other days as the board may direct.

History: En. Sec. 16, Ch. 105, L. 1933; amd. Sec. 5, Ch. 30, L. 1937.

4-122. (2815.76) **Conveyance of liquors—opening liquor during transit forbidden.** It shall be lawful to carry or convey liquor to any state store, and to and from any warehouse or depot established by the board

for the purposes of this act, and when permitted so to do by this act and the regulations made thereunder, and in accordance therewith, it shall be lawful for any common carrier, or other person, to carry or convey liquor sold by a vendor from a state store, or beer, when lawfully sold by a brewer, from the premises wherein such beer was manufactured, or from premises where the beer may be lawfully kept and sold, to any place to which the same may be lawfully delivered under this act, and the regulations made thereunder;

Provided that no such common carrier or any other person, shall open, or break, or allow to be opened or broken, any package or vessel containing liquor, or drink or use, or allow to be drunk or used, any liquor therefrom, while being so carried or conveyed.

History: En. Sec. 17, Ch. 105, L. 1933.

4-123 to 4-132. (2815.77 to 2815.86) **Repealed—Chapter 154, Laws of 1965.**

Repeal

These sections (Secs. 18 to 27, Ch. 105, L. 1933; Sec. 1, Ch. 3, L. 1937; Sec. 1, Ch. 112, L. 1955), relating to permits for the purchase of liquor, were repealed by Sec. 17, Ch. 154, Laws 1965.

4-133. (2815.87) **Club licenses—regulations—qualifications of applicant — cancellation — expiration — posting required.** (1) Upon application in the prescribed form and accompanied by the prescribed fee, the board may, in accordance with this act and the regulations made thereunder, grant a club license in respect of any premises kept or operated by a club, and specified in the license, entitling the club to purchase beer from a vendor or brewer licensed to sell beer under this act, and to keep on the premises such beer, and subject to the provisions of this act and the regulations made thereunder to sell the same to members of the club by the glass or open bottle, for consumption on the club premises.

(2) No club shall be granted a license to sell beer—

(a) If it is proprietary club, or operated for pecuniary gain;

(b) Unless such club was in operation as such on the first day of January, 1933, or, which being hereafter formed, was in continuous operation as such a club for at least one year immediately prior to the date of its application for a license to sell beer;

(c) Unless the club premises be constructed, equipped, conducted, managed and operated to the satisfaction of the board and in accordance with this act and the regulations made thereunder;

(d) Unless such club at least one month prior to the date of application has filed with the board notice of its intention to make such application accompanied by a description of the premises occupied and proposed to be occupied by such club, and complies with any regulations made from time to time by the board.

(3) Every club license shall be issued in the name of the applicant club, and no club license shall be transferable, nor shall the holder of a club license allow any other club or person to use the license.

(4) For the purpose of considering an application for a club license, the board may cause an inspection of the club premises to be made, and may enquire into all matters in connection with the constitution and opera-

tion of the club. The board may, in its discretion, grant or refuse the license applied for; and may from time to time in the exercise of like discretion, with or without any hearing, or assigning any reason therefor, suspend or cancel any club license, and all rights of the club to keep or sell beer thereunder shall be suspended or determined as the case may be.

(5) Upon receipt of notice of the suspension or cancellation of a club license, the licensee club will forthwith deliver upon the license to the board, and in the case of suspension, if the said club fails or neglects to deliver upon the license in accordance with the regulations made hereunder, the board may forthwith cancel the same. Where the license has been suspended only, the board may return the license to the licensee at the expiration or determination of the period of suspension, and the board shall notify all vendors in the municipality where the club has its premises, and such other persons as may be provided in the regulations made hereunder, of the suspension or cancellation of such club license.

(6) Unless sooner canceled, every club license issued by the board shall expire at midnight on the thirty-first day of December, in the year in respect of which the license is issued, but a club license shall become void and determined if and when the club, to which it was issued, ceases to carry on operations or ceases to be qualified as a club within the meaning of this act and the regulations made thereunder.

(7) Every club license issued under this section shall be subject to all conditions and restrictions imposed by this act, or by the regulations made thereunder.

(8) Every licensed club shall post and keep posted its club license in a prominent position on the club premises.

(9) The premises of every club which does not hold a valid and subsisting club license under this section shall be deemed to be a public place within the meaning of this act.

History: En. Sec. 28, Ch. 105, L. 1933.

Collateral References

Intoxicating Liquors⇐50 et seq., 128.

48 C.J.S. Intoxicating Liquors §§ 24, 123 et seq.

30 Am. Jur. 310, Intoxicating Liquors, §§ 101, 102.

4-134. (2815.88) **Druggist allowed liquor—sale of liquor by druggist, when authorized.** Any druggist may have in his possession alcohol purchased by him pursuant to this act; such alcohol to be used solely in connection with the business of the druggist in compounding medicines or as a solvent or preservative.

Provided that in a municipality where there is no state liquor store a druggist may keep for sale and may sell for strictly medicinal purposes liquor purchased by him pursuant to this act, but no sale of liquor shall be made by such last mentioned druggist except upon a bona fide prescription signed by a physician and no more than one sale and one delivery shall be made on any one prescription.

History: En. Sec. 29, Ch. 105, L. 1933; amd. Sec. 5, Ch. 154, L. 1965.

Collateral References

Intoxicating Liquors⇐49.

48 C.J.S. Intoxicating Liquors § 126.

4-135. (2815.89) **Restrictions concerning druggists.** Except as authorized or permitted by this act, or by the regulations made thereunder, and

in accordance therewith, nothing in this act, or in any act, shall be construed as authorizing or permitting any druggist to have or keep for sale, or by himself, or his clerk, servant or agent, to sell, any liquor.

History: En. Sec. 30, Ch. 105, L. 1933.

4-136. (2815.90) **Physician allowed liquor — restrictions — violations.** (1) Any physician who deems liquor necessary for the health of a patient of his whom he has seen or visited professionally may give to such patient a prescription therefor in the prescribed form, signed by the physician, or the physician may administer the liquor to the patient, for which purpose the physician shall administer only such liquor as was purchased by him pursuant to this act, and may charge for the liquor so administered; but no prescription shall be given nor shall liquor be administered by a physician except to a bona fide patient in cases of actual need, and when in the judgment of the physician the use of liquor as medicine in the quantity prescribed or administered is necessary.

(2) Every physician who gives any prescription or administers any liquor in evasion or violation of this act, or who gives to or writes for any person a prescription for or including liquor for purpose of enabling or assisting any person to evade any of the provisions of this act, or for the purpose of enabling or assisting any person to obtain liquor to be used as a beverage, or to be sold or disposed of in any manner in violation of the provisions of this act, shall be guilty of an offense against this act.

History: En. Sec. 31, Ch. 105, L. 1933; amd. Sec. 6, Ch. 154, L. 1965.

Collateral References

Intoxicating Liquors⇐49.

48 C.J.S. Intoxicating Liquors § 126.

4-137. (2815.91) **Dentist allowed liquor — restrictions — violations.** Any dentist who deems it necessary that any patient being then under treatment by him should be supplied with liquor as a stimulant or restorative may administer to the patient the liquor so needed, and for that purpose the dentist shall administer liquor purchased by him pursuant to this act, and may charge for the liquor so administered; but no liquor shall be administered by a dentist except to a bona fide patient in case of actual need, and every dentist who administers liquor in evasion or violation of this act shall be guilty of an offense against this act.

History: En. Sec. 32, Ch. 105, L. 1933; amd. Sec. 7, Ch. 154, L. 1965.

4-138. (2815.92) **Liquor allowed veterinary—restrictions—violations.** Any veterinary who deems it necessary may in the course of his practice administer or cause to be administered liquor to any dumb animal, and for that purpose the veterinary shall administer or cause to be administered liquor purchased by him pursuant to this act, and may charge for the liquor so administered or caused to be administered; but no veterinary shall give to or permit any person to consume as a beverage any liquor so purchased, and every veterinary who evades or violates or suffers or permits any evasion of this section shall be guilty of an offense against this act.

History: En. Sec. 33, Ch. 105, L. 1933; amd. Sec. 8, Ch. 154, L. 1965.

4-139. (2815.93) **Hospitals and sanitariums — restrictions — violations.** Any person in charge of an institution regularly conducted as a hospital or sanitarium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, may administer liquor purchased by him to any patient or inmate of the institution who is in need of the same, either by way of external application or otherwise for emergency medical purposes, and may charge for the liquor so administered; but no liquor shall be administered by any person under this section except to bona fide patients or inmates of the institution of which he is in charge and in cases of actual need, and every person in charge of an institution who administers liquor in evasion or violation of this act shall be guilty of an offense against this act.

History: En. Sec. 34, Ch. 105, L. 1933; amd. Sec. 9, Ch. 154, L. 1965.

4-140. (2815.94) **Application of act.** (1) Nothing in this act shall prevent any brewer, distiller, or other person duly licensed, under the provisions of any statute of the United States of America, for the manufacture of liquor, from having or keeping liquor in a place and in the manner authorized by or under any such statute.

It is hereby declared to be the policy of the state of Montana that the manufacture of liquor including the distillation, rectification, bottling and processing as these terms are defined under the provisions of the laws of the United States shall be authorized and permitted by any brewer, distiller, rectifier or other person duly licensed under any provision of any statute of the United States of America in a place and in the manner authorized by or under any statute of the United States provided the Montana state liquor control board may make such regulations as the board deem necessary with respect thereto, not inconsistent with this act, or with the statutes of the United States of America or regulations issued under the provisions of the federal Alcohol Administration Act, title 27, United States Code sections 201 through 212 inclusive or regulations issued under the provisions of the Internal Revenue Code, title 26, United States Code, sections 5001 through section 5693, inclusive.

(2) Nothing in this act shall prevent—

(a) The sale of liquor by any person to the board;

(b) The purchase, importation and sale of liquor by the board for the purposes of and in accordance with this act.

History: En. Sec. 35, Ch. 105, L. 1933; amd. Sec. 1, Ch. 67, L. 1965.

Purchase of Materials

The 1965 amendment to this section indicates that materials to be used in the manufacture of liquor are not required to be purchased through the liquor control board, but may be purchased in any manner not inconsistent with the laws and regulations of the federal government. Alpha Industries, Inc. v. Montana Liquor Control Board, 146 M 23, 403 P 2d 606.

Scope

The 1965 amendment to this section made it clearly permissible to engage in the manufacture of liquor in Montana provided such business is also authorized by the statutes of the United States of America. Alpha Industries, Inc. v. Montana Liquor Control Board, 146 M 23, 403 P 2d 606.

4-141. (2815.95) **Preparations not subject to act.** (1) Subject to the provisions of this section, nothing in this act shall, by reason only that

such preparation contains alcohol, prevent the manufacture, sale, purchase or consumption—

(a) of any extract, essence or tincture or other preparation containing alcohol, which is prepared according to a formula of the United States Pharmacopoeia, or according to a formula approved of by the board; or

(b) of any proprietary or patent medicine prepared according to a formula approved of by the board.

(2) The board, if of opinion that any such proprietary or patent medicine, extract, essence, tincture or preparation which contains alcohol, or any other preparation of a solid, semisolid or liquid nature containing alcohol which, or any extract from which, can be used as a beverage or as the ingredient of any beverage, may prohibit the sale thereof by retail within the state, or the possession of the same for sale by retail within the state, except by a state liquor store, or by persons duly licensed by the board to keep and sell the same by retail in accordance with this act and the regulations made thereunder.

(3) The board shall notify the manufacturer or vendor of such proprietary or patent medicine, extract, essence, tincture or preparation, of the said prohibition and from and after the date of such notification any person within the state selling or keeping for sale any such proprietary or patent medicine, extract, essence, tincture or preparation so prohibited as aforesaid shall be guilty of an offense under this act.

History: En. Sec. 36, Ch. 105, L. 1933.

4-142. (2815.96) **Local option law—petition—time for election.** Election to be ordered upon application of one-third of the voters of any county. Upon application by petition, signed by one-third of the voters who are qualified to vote for members of the legislative assembly in any county in the state, the board of county commissioners must order an election to be held at the places of holding elections for county officers, to take place within forty days after the reception of such petition, to determine whether or not any spirituous or malt liquors, wine, or cider, or any intoxicating liquors or drinks may be sold within the limits of the county. No election, under this section must take place in any month in which general elections are held. The board of county commissioners must determine on the sufficiency of the petition presented from the roll of registered electors of the territory affected.

History: En. Sec. 37, Ch. 105, L. 1933.

References

State ex rel. McCarten v. Harris, 112 M 344, 351, 115 P 2d 292.

Collateral References

Intoxicating Liquors⇨24 et seq.

48 C.J.S. Intoxicating Liquors § 58 et seq.

30 Am. Jur. 341, Intoxicating Liquors, § 167 et seq.

Operation and effect, in dry territory, of general state statute making sale or possession for sale of intoxicating liquor, without a license, an offense. 8 ALR 2d 750.

Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting, without later election. 25 ALR 2d 863.

4-143. (2815.97) **Notice of election.** The notice of election must be published once a week for four weeks in such newspapers of the county

where the election is to be held as the board of county commissioners may think proper.

History: En. Sec. 38, Ch. 105, L. 1933.

4-144. (2815.98) **Ballots, what to contain.** The county clerk must furnish the ballots to be used at such election, as provided in the general election law, which ballots must contain the following words: "Sale of intoxicating liquors, yes"; "Sale of intoxicating liquors, no"; and the elector in order to vote must mark an X opposite one of the answers.

History: En. Sec. 39, Ch. 105, L. 1933.

4-145. (2815.99) **Election, how held.** The polling places must be established, the judges and other officers to conduct the election must be designated, and the election must be held, canvassed and returned in all respects in conformity to the laws of the state.

History: En. Sec. 40, Ch. 105, L. 1933.

Collateral References
Intoxicating Liquors⊂=34.
48 C.J.S. Intoxicating Liquors § 83 et seq.

4-146. (2815.100) **Dealing in intoxicating liquors prohibited if majority of vote against sale.** If a majority of the votes cast are "Sale of intoxicating liquors, no," the board of county commissioners must publish the result once a week for four weeks in the paper in which the notice of the election was given. The provisions of this act shall take effect at the expiration of the time of the publication of the notice, and thereupon all existing licenses shall be canceled.

History: En. Sec. 41, Ch. 105, L. 1933.

Collateral References
Intoxicating Liquors⊂=36.
48 C.J.S. Intoxicating Liquors §§ 70, 94.

4-147. (2815.101) **No election more than once in two years.** No election must be held in the same county oftener than once in two years thereafter.

History: En. Sec. 42, Ch. 105, L. 1933.

Collateral References
Intoxicating Liquors⊂=31.
48 C.J.S. Intoxicating Liquors § 73.

4-148. (2815.102) **Sale of liquors prohibited.** If a majority of the votes at the election are, "Sale of intoxicating liquors, no," it shall not be lawful for any person within the county in which the vote was taken, to sell, either directly or indirectly, or give away, to induce trade at any place of business, or furnish to any person, any alcoholic, spirituous, malt, or intoxicating liquors.

History: En. Sec. 43, Ch. 105, L. 1933.

Collateral References
Intoxicating Liquors⊂=40.
48 C.J.S. Intoxicating Liquors § 70.

4-149. (2815.103) **Election, how contested.** Any election held under the provisions of this act may be contested in the same manner as provided by the general laws.

History: En. Sec. 44, Ch. 105, L. 1933.

Collateral References
Intoxicating Liquors⊂=37.
48 C.J.S. Intoxicating Liquors § 87.

4-150. (2815.104) **Sale of liquor unlawful, when—foreign substance in liquor forbidden—possession of liquor, when unlawful.** (1) Except as provided by this act, no person shall, within the state, by himself, his clerk, servant, or agent, expose or keep for sale, or directly or indirectly or upon any pretense, or upon any device, sell, or offer to sell, or in consideration of the purchase or transfer of any property, or for any other consideration, or at the time of the transfer of any property, give to any other person any liquor.

(2) No person shall have, keep or sell any beer, or malt liquor, to which has been added any foreign substance.

(3) No person shall have or keep any liquor within the state which has not been purchased from a state vendor of the Montana liquor control board or from a druggist authorized to sell the same; provided, however, that nothing in this act shall prohibit any person entering this state from any other state, or from any foreign country, from having in his possession not to exceed one (1) wine gallon of alcoholic liquor, which liquor shall have been purchased in another state or foreign country but no person claiming to have so entered the state, shall at any time, have in his possession more than one (1) wine gallon of intoxicating liquor which shall not have been purchased from a state liquor store. This subsection shall not apply to the board or to the keeping or having of liquor by brewers, distillers and other persons duly licensed by the United States for the manufacture of such liquor; nor to the keeping or having of any proprietary or patent medicines or of any extracts, essences, tinctures or preparations where such having and keeping is authorized by this act.

(4) Nothing contained in this section shall apply to the possession by a sheriff or his bailiff of liquor seized under execution or other judicial or extra-judicial process nor to sales under executions or other judicial or extra-judicial process to the board, or in the case of beer to a brewer, beer licensee, club licensee or canteen licensee.

History: En. Sec. 45, Ch. 105, L. 1933; amd. Sec. 1, Ch. 166, L. 1935; amd. Sec. 1, Ch. 66, L. 1957.

Information in Language of Statute Sufficient

Information charging unlawful sale of intoxicating liquor in the language of subsection (1) of this section, was not demurrable as uncertain and ambiguous. If too general in character, defendant had a plain remedy by application for a bill of particulars. State v. Driscoll, 101 M 348, 351, 54 P 2d 571.

References

State v. Wiles, 98 M 577, 41 P 2d 8; Alpha Industries, Inc. v. Montana Liquor Control Board, 146 M 23, 403 P 2d 606.

Collateral References

Intoxicating Liquors⇨123.

48 C.J.S. Intoxicating Liquors § 203.

30 Am. Jur. 396, Intoxicating Liquors, § 267 et seq.

4-151. (2815.105) **Liquor dispensed only in accordance with act.** No brewer, distiller, or manufacturer of liquor shall, within the state, by himself, his clerk, servant or agent, give to any person any liquor, except as may be permitted by and in accordance with the regulations made under this act.

History: En. Sec. 46, Ch. 105, L. 1933.

Collateral References

Intoxicating Liquors⇨124 et seq.

48 C.J.S. Intoxicating Liquors § 204 et seq.

4-152. (2815.106) **Place and time of selling liquor.** No vendor, and no person acting as the clerk or servant of or in any capacity for any vendor, shall sell liquor in any other place or at any other time or otherwise than as authorized by this act and the regulations.

History: En. Sec. 47, Ch. 105, L. 1933.

4-153. (2815.107) **Board members not to be interested in liquor sales —unlawful to give or receive gift, commission or remuneration.** (1) No member or employee of the board shall be directly or indirectly interested or engaged in any other business or undertaking dealing in liquor, whether as owner, part owner, partner, member of syndicate, shareholder, agent or employee, and whether for his own benefit or in a fiduciary capacity for some other person.

(2) No member or employee of the board or any employee of the state shall solicit or receive directly or indirectly any commission, remuneration or gift whatsoever from any person or corporation having sold, selling or offering liquor for sale to the state or board in pursuance of this act.

(3) No person selling or offering for sale to, or purchasing liquor from, the state or the board, shall either directly or indirectly offer to pay any commission, profit or remuneration, or make any gift to any member or employee of the board or to any employee of the state, or to anyone on behalf of such member or employee.

(4) The prohibition contained in subsection (3) of this section does not prohibit the board from receiving samples of liquor for the purpose of quality determination. The board shall maintain written records of all samples received; such records shall show the brand name, amount, from whom received, and the name of the person to whom the sample was delivered or other final disposition.

History: En. Sec. 48, Ch. 105, L. 1933; amd. Sec. 1, Ch. 144, L. 1965.

Collateral References

Intoxicating Liquors⇨61, 129.

48 C.J.S. Intoxicating Liquors §§ 102, 212.

4-154. (2815.108) **Transfer of liquor except as provided by act unlawful.** Except as provided in this act, no person shall, within the state, by himself, his clerk, servant, or agent, attempt to purchase, or directly or indirectly or upon any pretense or upon any device, purchase, or in consideration of the sale or transfer of any property, or for any other consideration, or at the time of the transfer of any property, take or accept from any other person any liquor.

History: En. Sec. 49, Ch. 105, L. 1933.

Collateral References

Intoxicating Liquors⇨110 et seq., 128, 146 et seq.

48 C.J.S. Intoxicating Liquors §§ 191 et seq., 211.

4-155. (2815.109) **Repealed—Chapter 53, Laws of 1949.**

Repeal

This section (Sec. 50, Ch. 105, L. 1933), prohibiting the cashing of pay checks at liquor stores, was repealed as Sec. 2815.109, Revised Codes 1935, by Sec. 1, Ch. 53, Laws 1949.

4-156. (2815.110) **Consumption of liquor on druggists' premises prohibited.** No person, within the state of Montana, shall consume any liquor on any premises where liquor is kept for sale by a druggist, nor shall any druggist permit any liquor to be consumed on such premises.

History: En. Sec. 51, Ch. 105, L. 1933.

48 C.J.S. Intoxicating Liquors §§ 214, 236, 268, 280 et seq.

Collateral References

Intoxicating Liquors⇐131 et seq.

4-157. (2815.111) **Repealed—Chapter 154, Laws of 1965.**

Repeal

This section (Sec. 52, Ch. 105, L. 1933) prohibiting the consumption of liquor except from an officially sealed package purchased under permit, was repealed by Sec. 17, Ch. 154, Laws 1965.

4-158. (2815.112) **Liquor container must have been sealed with official seal—powers and duties of peace officers.** (1) Except in the case of—

(a) liquor imported by the state, or by the board; or

(b) liquor had and kept by a person, and in a place and manner referred to in section 4-140; or

(c) beer and malt liquor, lawfully had or kept under this act; or

(d) any liquor kept for sale by a druggist under section 4-134—

no liquor shall be kept or had by any person within the state unless the package, not including a decanter or other receptacle containing the liquor for immediate consumption, in which the liquor is contained has, while containing that liquor, been sealed with the official seal prescribed under this act.

(2) Any inspector or peace officer who finds liquor, which he has reasonable cause to believe is had or kept by any person in violation of the provisions of this act, may, without warrant, forthwith seize and remove the same and the packages in which the liquor is kept, and upon conviction of the person for a violation of any provision of this section the liquor and all packages containing the same shall, in addition to any other penalty prescribed by this act, ipso facto be forfeited to the state of Montana.

History: En. Sec. 53, Ch. 105, L. 1933.

48 C.J.S. Intoxicating Liquors §§ 216 et seq., 384, 388, 390-392, 395 et seq.

Collateral References

Intoxicating Liquors⇐133 et seq., 244 et seq.

4-159. (2815.113) **Persons not to consume liquor or be intoxicated in public places.** (1) Except in the case of liquor purchased and consumed in accordance with the beer license or a special license for a purpose permitting its consumption in a public place, no person shall consume liquor in a public place.

(2) No person shall be in an intoxicated condition in a public place.

History: En. Sec. 54, Ch. 105, L. 1933; amd. Sec. 10, Ch. 154, L. 1965.

Liability of Tavern Keeper

Subdivision (2) of this section does not furnish the basis for holding a tavern keeper liable for injury from the acts of an intoxicated patron in the absence of evidence that the tavern keeper knew of the intoxication. Nevin v. Carlasco, 139 M 512, 365 P 2d 637, 639.

4-160. (2815.114) **Sales to intoxicated persons prohibited.** No vendor, beer licensee, or club licensee, nor any employee of a vendor, beer

licensee, or club licensee, shall sell any liquor, or permit any liquor to be sold, to any person apparently under the influence of liquor.

History: En. Sec. 55, Ch. 105, L. 1933.

Collateral References

Intoxicating Liquors⇐161.

48 C.J.S. Intoxicating Liquors § 258.

30 Am. Jur. 423, Intoxicating Liquors, § 321.

4-161. (2815.115) **Age limit for sale of liquor.** Except in the case of liquor given to a person under the age of twenty-one years by his parent or guardian for beverage or medicinal purposes, or administered to him by his physician or dentist for medicinal purposes, or sold to him by a vendor or druggist upon the prescription of a physician, no person shall sell, give, or otherwise supply liquor to any person under the age of twenty-one years, or permit any person under that age to comsume liquor.

History: En. Sec. 56, Ch. 105, L. 1933.

NOTE.—This section, in so far as it covers the sale of liquor to minors, was repealed by implication by chapter 84 of Laws 1937, sections 11 (4-413) and 18 (4-420). State v. Holt, 121 M 459, 194 P 2d 651, 660; State v. Morrissey, 122 M 246, 199 P 2d 964.

Cross-References

Intoxicating liquor not to be sold or given to minors, secs. 4-413, 94-35-106, 94-35-106.1.

Possession of beer or liquor by minor, misdemeanor, sec. 94-35-106.2.

Sale of Liquor to Minors—Law Governing

While this section operated as a repeal of section 11048.1 R. C. M. 1935 it was in turn repealed by implication, in so far as it covers the sale of liquor to minors, by chapter 84, Laws 1937, which so far as the sale of liquor to minors is concerned, in section 18 (4-420), makes such sale by a "person who has not been issued a license" a felony, but by section 11 (4-413) makes such sale by a "licensee or his or her employee" merely a misdemeanor. State v. Holt, 121 M 459, 194 P 2d 651, 660; State v. Morrissey, 122 M 246, 199 P 2d 964.

This section and section 4-237 are in conflict with sec. 1 of Laws 1927, ch. 122 (11048.1 R. C. M. 1935) and repealed such section by implication. State v. Holt, 121 M 459, 194 P 2d 651; State v. Morrissey, 122 M 246, 199 P 2d 964.

Collateral References

Intoxicating Liquors⇐159.

48 C.J.S. Intoxicating Liquors § 259.

30 Am. Jur. 424, Intoxicating Liquors, § 322 et seq.

4-162. (2815.116) **Repealed—Chapter 154, Laws of 1965.**

Repeal

This section (Sec. 57, Ch. 105, L. 1933), prohibiting the supply of liquor to a person whose permit has been suspended or canceled, was repealed by Sec. 17, Ch. 154, Laws 1965.

4-163. (2815.117) **Procuring liquor for interdicted person forbidden.** Except in the case of liquor supplied to an interdicted person upon the prescription of a physician, or administered to him by a physician or dentist pursuant to this act, no person shall procure for or sell, or give to any interdicted person, any liquor, nor directly or indirectly assist in procuring or supplying any liquor to any interdicted person.

History: En. Sec. 58, Ch. 105, L. 1933.

4-164. (2815.118) **Interdicted persons—presence on liquor store or beer licensee's premises forbidden.** Any interdicted person who enters or is found upon the premises of any state liquor store, or the premises for which a beer license has been granted, shall be guilty of an offense against this act.

History: En. Sec. 59, Ch. 105, L. 1933; amd. Sec. 11, Ch. 154, L. 1965.

Collateral References

Intoxicating Liquors⇐58.
48 C.J.S. Intoxicating Liquors § 135.

4-165, 4-166. (2815.199, 2815.120) **Repealed — Chapter 154, Laws of 1965.**

Repeal

These sections (Secs. 60, 61, Ch. 105, L. 1933), relating to permit applications and liquor purchases by persons whose permits have been suspended or canceled, were repealed by Sec. 17, Ch. 154, Laws 1965.

4-167. (2815.121) **Drunkenness when and where not to be permitted.** No person shall—

(a) Permit drunkenness to take place in any house or on any premises of which he is owner, tenant, or occupant; or

(b) Permit or suffer any person apparently under the influence of liquor to consume any liquor in any house or on any premises of which the first-named person is owner, tenant, or occupant; or

(c) Give any liquor to any person apparently under the influence of liquor.

History: En. Sec. 62, Ch. 105, L. 1933.

Cross-Reference

Intoxicated person, sales to prohibited, sec. 4-160.

Civil Liability

This section does not furnish the basis for holding a tavern keeper liable for injury from the acts of an intoxicated patron in the absence of evidence that the tavern keeper knew of the intoxication. Nevin v. Carlasco, 139 M 512, 365 P 2d 637, 639.

4-168. (2815.122) **Repealed—Chapter 154, Laws of 1965.**

Repeal

This section (Sec. 63, Ch. 105, L. 1933), relating to the possession and use of liquor by permit holders or persons not holding permits, was repealed by Sec. 17, Ch. 154, Laws 1965.

4-169. (2815.123) **Liquor in hotels—restrictions on.** Except in the case of beer kept or consumed in premises for which a beer license has been granted, under the law, and which form a part of a hotel, and except in the case of liquor kept and consumed pursuant to a special permit granted under the provisions of clause (e) of subsection (2) of section 4-123, no person—

(a) shall keep or consume liquor in any part of a hotel other than a private guest room;

(b) shall keep or have any liquor in any room in a hotel unless he is a bona fide guest of the hotel and is duly registered in the office of the hotel as an occupant of that room and has baggage and personal effects belonging to him in the hotel:

Provided that there shall not be kept or had in any such room a greater quantity of liquor than one person is entitled to acquire at one time under an individual permit.

History: En. Sec. 64, Ch. 105, L. 1933.

Compiler's Note

Section 4-123, referred to in the first paragraph of this section, was repealed by Sec. 17, Ch. 154, Laws 1965.

Collateral References

30 Am. Jur. 422, Intoxicating Liquors, § 316.

4-170. (2815.124) **Unlawful to canvass for orders for sale or purchase of liquor—advertising liquor or beer, when prohibited—exceptions.** No person within the state shall—

(1) canvass for, receive, take or solicit orders for the purchase or sale of any spirits or wines or act as agent or intermediary for the sale or purchase of any spirits or wines or hold out himself as such agent or intermediary;

(1a) canvass for or solicit orders for the purchase or sale of any beer or malt liquor excepting in the case of beer proposed to be sold to beer licensees, club licensees duly authorized to sell beer under the provisions of this act;

(2) exhibit or display, or permit to be exhibited or displayed, any sign or poster containing the words "bar," "bar room," "saloon," "tavern," "wines," "spirits," or "liquors" or words of like import;

(3) exhibit or display, or permit to be exhibited or displayed, any advertisement or notice of or concerning liquor by an electric or illuminated sign, contrivance or device or on any hoarding signboard, billboard or other like place in public view or by any of the means aforesaid, advertise any liquor. This subsection shall not apply to any advertisement respecting beer or malt liquor on a brewery or premises where beer or malt liquor may be lawfully stored or kept by a brewer under the law; provided that such last mentioned advertisement has first been permitted in writing by the board and then subject to the directions of the board;

(4) exhibit, publish, or display, or permit to be exhibited, published or displayed, any other advertisement, or form of advertisement, or any other announcement, publication or price list of or concerning liquor or where or from whom the same may be had, obtained or purchased, unless permitted so to do by the regulations, and then only in accordance with such regulations;

(5) This section shall not apply—

(a) to the board, nor to any act of the board, nor to any state liquor store; nor

(b) to the receipt or transmission of a telegram or letter by any telegraph agent or operator or post-office employee in the ordinary course of his employment as such agent, operator or employee.

History: En. Sec. 65, Ch. 105, L. 1933.

Advertising of Liquor or Beer

Prohibition of liquor or beer advertising as a reasonable regulation has been uniformly sustained. Fletcher v. Paige, 124 M 114, 220 P 2d 484, 488, 19 ALR 2d 1108.

Beer being included within the term "liquor" in this section under the provisions of section 4-102 as originally enacted, the 1949 amendment to such section that liquor "shall not mean or include beer as that term is defined in the Montana Beer Act" did not impliedly repeal the prohibition in subsection (3) of this section against beer advertising. Fletcher v. Paige, 124 M 114, 220 P 2d 484, 19 ALR 2d 1108, distinguished in 298 F 2d 66, 71. (See 1951 amendment to section 4-101 making the term "beer" as referred to in this act apply only to that containing more than 4% of alcohol.)

Collateral References

Intoxicating Liquors⇨110.
48 C.J.S. Intoxicating Liquors § 209.

Validity, construction, and effect of statutes, ordinances, or regulations prohibiting or regulating advertising of intoxicating liquors. 19 ALR 2d 1114.

4-171. (2815.125) **Sale of material branded as liquor forbidden, when.** No person not expressly authorized by this act to deal in liquor, shall with-

in the state keep for sale, offer for sale, or sell anything which is labeled or branded with the name of any kind of liquor, whether the same contains any liquor or not.

History: En. Sec. 66, Ch. 105, L. 1933.

48 C.J.S. Intoxicating Liquors § 223 et seq.

Collateral References

Intoxicating Liquors⊂⊃140 et seq.

4-172. Bottle clubs prohibited. The operation of beer or liquor or alcoholic beverage bottle clubs is hereby prohibited by any person, persons, partnership, firm, corporation or association. A bottle club is hereby defined as any person, persons, partnership, firm, corporation or association maintaining premises, not licensed for the sale of beer or liquor, for a fee or other consideration, including the sale of food, mixes, ice, or any other fluids for alcoholic liquors, or otherwise furnishing premises for such purposes and from which they would derive revenue.

History: En. Sec. 1, Ch. 200, L. 1959; amd. Sec. 1, Ch. 109, L. 1963.

4-173. Violation—penalty—abatement as nuisance. A violation of this act shall be deemed a nuisance and may be abated, and any person, persons, partnership, firm, corporation or association found guilty of violating this section shall be punished by fine of not more than five hundred dollars ($500.00), or by six (6) months in the county jail, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 200, L. 1959.

CHAPTER 2

STATE LIQUOR CONTROL ACT OF MONTANA (continued)—INTERDICTION AND OTHER ENFORCEMENT PROVISIONS—FINANCE—MISCELLANEOUS

Section 4-201. Interdiction—order of—effect—disposal of liquor of interdicted person.
4-202. Filing of order of interdiction.
4-203. Revocation of order of interdiction—restoration of rights.
4-204. Application and setting aside order of interdiction—restoration of rights—notice of application.
4-205. Penalty for violations of act.
4-206. Officer or agent of corporation deemed party to offense, when.
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4-239. Actions to enjoin nuisance—procedure.
4-240. License tax on liquor—amount—distribution of proceeds.
4-241. Use of proceeds of license tax.

4-201. (2815.126) **Interdiction — order of — effect — disposal of liquor of interdicted person.** (1) Where it is made to appear to the satisfaction of any court that any person, resident or sojourning within the state, by excessive drinking of liquor, misspends, wastes, or lessens his estate, or injures his health, or endangers or interrupts the peace and happiness of his family, the court may make an order of interdiction prohibiting the sale of liquor to him until further order; and the court shall cause the order to be forthwith filed with the board.

(2) Every interdicted person keeping or having in his possession or under his control any liquor shall be guilty of an offense against this act, and, on summary conviction thereof, the court making the conviction may in and by the conviction declare the liquor and all packages in which the same is contained to be forfeited to the state of Montana:

Provided that on the making of an order for interdiction the interdicted person may forthwith deliver to the board all liquor then in his possession or under his control to be kept for him by the board until the order of interdiction is revoked or set aside, or to be purchased by the board at a price to be fixed by it.

History: En. Sec. 67, Ch. 105, L. 1933; amd. Sec. 12, Ch. 154, L. 1965.

References

State v. Wiles, 98 M 577, 41 P 2d 8; State ex rel. Geschwender v. La Rowe, 136 M 591, 341 P 2d 906.

Collateral References

Intoxicating Liquors⇐106 et seq., 258 et seq.

48 C.J.S. Intoxicating Liquors §§ 174 et seq., 405, 407 et seq.

4-202. (2815.127) **Filing of order of interdiction.** Upon receipt of the order of interdiction, the board shall notify the interdicted person and all vendors, and such other persons as may be provided by the regulations, of the order of interdiction so made and filed prohibiting the sale of liquor to the interdicted person.

History: En. Sec. 68, Ch. 105, L. 1933; amd. Sec. 13, Ch. 154, L. 1965.

References

State v. Wiles, 98 M 577, 41 P 2d 8; State ex rel. Geschwender v. La Rowe, 136 M 591, 341 P 2d 906.

4-203. (2815.128) **Revocation of order of interdiction—restoration of rights.** The court by whom an order of interdiction is made under this

act, upon being satisfied that the justice of the case so requires, may revoke the order of interdiction by an order filed with the board; and upon the filing of the order of revocation, the interdicted person shall be restored to all his rights under this act, and the board shall accordingly forthwith notify all vendors and such other persons as may be provided by the regulations.

History: En. Sec. 69, Ch. 105, L. 1933.

References

State v. Wiles, 98 M 577, 41 P 2d 8; State ex rel. Geschwender v. La Rowe, 136 M 591, 341 P 2d 906.

4-204. (2815.129) **Application and setting aside order of interdiction —restoration of rights—notice of application.** (1) Upon the application to the judge of any district court by any person in respect of whom an order of interdiction has been made under this act, and upon it being made to appear to the satisfaction of the judge that the circumstances of the case did not warrant the making of the order of interdiction, or upon proof that the interdicted person has refrained from drunkenness for at least twelve months immediately preceding the application, the judge may by order set aside the order of interdiction filed with the board, and the interdicted person shall be restored to all his rights under this act, and the board shall accordingly forthwith notify all vendors and such other persons as may be provided by the regulations.

(2) The applicant shall, at least ten clear days before the application, give notice thereof to the board, in writing, served upon the board, and to such other persons as the judge may direct.

History: En. Sec. 70, Ch. 105, L. 1933.

References

State v. Wiles, 98 M 577, 41 P 2d 8; State ex rel. Geschwender v. La Rowe, 136 M 591, 341 P 2d 906.

Collateral References

Intoxicating Liquors⚖108, 278.
48 C.J.S. Intoxicating Liquors §§ 177, 425.

4-205. (2815.130) **Penalty for violations of act.** Every person who violates any provision of this act or the regulations made hereunder, shall be guilty of a misdemeanor unless other punishment is herein prescribed.

History: En. Sec. 71, Ch. 105, L. 1933.

Jurisdiction of Prosecutions

The provisions of the Retail Liquor License Act (4-401 et seq.) control with respect to prosecution of a licensee for making a sale to an interdicted person and a justice court had jurisdiction to act upon a complaint charging defendant with a sale of liquor to an interdicted person. State ex rel. Geschwender v. La Rowe, 136 M 591, 341 P 2d 906.

References

State v. Wiles, 98 M 577, 41 P 2d 8; State v. Holt, 121 M 459, 194 P 2d 651, 656.

Collateral References

Criminal Law⚖27.
22 C.J.S. Criminal Law § 7.

4-206. (2815.131) **Officer or agent of corporation deemed party to offense, when.** Where an offense against this act is committed by a corporation, the officer or agent of the corporation in charge of the premises in which the offense is committed shall prima facie be deemed to be a party to the offense so committed, and shall be personally liable to the penalties

prescribed for the offense as a principal offender; but nothing in this section shall relieve the corporation or the person who actually committed the offense from liability therefor.

History: En. Sec. 72, Ch. 105, L. 1933.

Collateral References

Corporations⇐306, 423.

19 C.J.S. Corporations §§ 838, 1260 et seq.

4-207. (2815.132) **Occupant of premises deemed party to offense, when.** Upon proof of the fact that an offense against this act has been committed by any person in the employ of the occupant of any house, shop, room, or other premises in which the offense is committed, or by any person who is suffered by the occupant, to be or remain in or upon such house, shop, room, or premises or to act in any way for the occupant, the occupant shall prima facie be deemed to be a party to the offense so committed, and shall be liable to the penalties prescribed for the offense as a principal offender, notwithstanding the fact that the offense was committed by a person who is not proved to have committed it under or by the direction of the occupant; but nothing in this section shall relieve the person actually committing the offense from liability therefor.

History: En. Sec. 73, Ch. 105, L. 1933.

Application of Section

This section is part of the State Liquor Control Act and is applicable only to an offense against that act. State v. Holt, 121 M 459, 194 P 2d 651, 659.

Ostensible Agency

A conviction may be had of the owner of a tavern for a violation of sections 4-330 and 4-345 for sale of beer to minors by a barmaid, although the barmaid was not on the defendant's payroll, because defendant knew that the barmaid operated the tavern when the manager was gone and the defendant reaped all the benefits of such sales and remained silent. There was ample evidence tending to show at the very least, an ostensible agency. State v. Erlandson, 126 M 316, 249 P 2d 794, 797.

Quasi Presumption

This section does not provide punishment for any offense but merely purports to state a rule of evidence, a quasi presumption. State v. Holt, 121 M 459, 194 P 2d 651, 659.

Collateral References

Intoxicating Liquors⇐168, 169.

48 C.J.S. Intoxicating Liquors §§ 271-275.

4-208. (2815.133) **Search warrants—issuance.** (1) Upon information on oath by any inspector appointed under this act or by any peace officer showing reasonable cause to believe that liquor is unlawfully kept or had, or kept or had for unlawful purposes, in any building or premises, it shall be lawful for any justice by warrant under his hand to authorize and empower the inspector or peace officer, or any other person named therein, to enter and search the building or premises and every part thereof; and for that purpose to break open any door, lock, or fastening of the building or premises or any part thereof, or any closet, cupboard, box, or other receptacle therein which might contain liquor.

History: En. Sec. 74, Ch. 105, L. 1933.

Collateral References

Intoxicating Liquors⇐249 et seq.

48 C.J.S. Intoxicating Liquors §§ 392, 394, 396.

30 Am. Jur. 526, Intoxicating Liquors, § 524 et seq.

4-209. (2815.134) **Seizure of liquor and conveyance—forfeiture of conveyance and liquor to state.** Whenever an inspector or any peace officer in making or attempting to make a search under and in pursuance

of authority of law, shall find in any motor vehicle, motor car, automobile, vessel, boat, canoe or conveyance of any description liquor which is unlawfully kept or had, or kept or held for unlawful purposes contrary to the provisions of this act, he may forthwith seize the liquor and packages in which the same is contained, and the motor vehicle, motor car, automobile, vessel, boat, canoe or conveyance in which such liquor is found; and upon the conviction of the occupant or person in charge of the vehicle, motor car, automobile, vessel, boat, canoe or conveyance, or of any other person, for having or keeping such liquors contrary to any of the provisions of this act in any such vehicle, motor car, automobile, vessel, boat, canoe or conveyance, the court in which the conviction of any such person is had may, in addition to the sentence imposed under authority of law, declare the liquor or any part thereof so seized, and the package in which the same is contained, to be forfeited to the state of Montana; and the court may in and by decree, further declare the vehicle, motor car, automobile, vessel, boat, canoe or conveyance so seized to be forfeited to the state of Montana.

History: En. Sec. 75, Ch. 105, L. 1933.

Collateral References

Intoxicating Liquors⊂=244 et seq.

48 C.J.S. Intoxicating Liquors §§ 384, 388, 390-392, 395 et seq.

30 Am. Jur. 539, Intoxicating Liquors, § 549 et seq.

4-210. (2815.135) **Force may be used in seizure of liquor, when—retention of seized liquor—forfeiture—hearing.** (1) Where liquor is found by any inspector or peace officer on any premises or in any place in such quantities as to satisfy the inspector or peace officer that such liquor is being had or kept contrary to any of the provisions of this act, it shall be lawful for the inspector or peace officer to forthwith seize and remove, by force if necessary, any liquor so found, and the packages in which the liquor was had or kept and immediately turn said liquor over to the Montana liquor control board.

(2) The Montana liquor control board shall commence an action in the district court of the county in which the liquor is found and seized against said liquor and the person or persons actually or apparently in possession or control thereof if any such person be present at the time of the seizure. The said liquor shall be named as one of the defendants to said action.

(3) The complaint shall show the date and place of seizure, the name of the person or persons actually or apparently in possession or control thereof if any such person be present at the time of the seizure, the reasons the Montana liquor control board claims the right to the possession of said liquor and shall demand that all persons who claim any right to the possession of said liquor shall show the nature of their claim or claims and that the court declare said liquor contraband and that the court order said liquor be forfeited to the state of Montana.

(4) Summons shall be issued, served or published as in other civil actions provided by Title 93, except that the summons shall be published in the county where said liquor was seized if a newspaper is published in said county.

(5) In all actions brought under this act, proof of the absence of the official seal of the Montana liquor control board upon the bottle, jug, package, container or containers of such liquor shall be prima facie evidence that said liquor is contraband liquor and prima facie evidence of unlawful possession thereof in the defendants and each of them and in all other persons excepting the Montana liquor control board, and the court shall order all such liquor contraband and forfeited to the state of Montana.

History: En. Sec. 76, Ch. 105, L. 1933; amd. Sec. 1, Ch. 140, L. 1945.

Collateral References
Intoxicating Liquors⇐244.
48 C.J.S. Intoxicating Liquors § 384.

4-211. (2815.136) **Disposal of forfeited liquor—report by officers of seizure.** (1) In every case in which a court makes any order for the forfeiture of liquor under any of the provisions of this act, and in every case in which any claimant to liquor under the provisions of section 4-210, fails to establish his claim and right thereto, the liquor in question and the packages in which the liquor is kept shall forthwith be delivered to the board. The board shall thereupon, determine the market value of all forfeited liquor which is found to be suitable for sale in the state liquor stores, and the board shall pay the amount so determined to the state treasurer, after deducting therefrom the expenses necessarily incurred by the board for transporting the forfeited liquor to the state liquor warehouses, and the liquor suitable for sale shall be taken into stock by the board and sold under the provisions of this act. All forfeited liquor which is found to be unsuitable for sale in state liquor stores shall be destroyed under competent supervision as may from time to time be directed by the board.

(2) In every case in which liquor is seized by a peace officer it shall be his duty to forthwith make or cause to be made to the board a report in writing, of the particulars of such seizure.

History: En. Sec. 77, Ch. 105, L. 1933.

48 C.J.S. Intoxicating Liquors §§ 395, 403.

Collateral References
Intoxicating Liquors⇐255.

4-212. (2815.137) **Inspection of carriers' records—when authorized.** For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this act, the board or any person appointed by it in writing for the purpose may inspect the freight and express books and records, and all waybills, bills of lading, receipts, and documents in the possession of any railway company, express company, or other common carrier doing business within the state containing any information or record relating to any goods shipped or carried or consigned or received for shipment or carriage within the state.

History: En. Sec. 78, Ch. 105, L. 1933.

4-213. (2815.138) **Unlawful for carrier to refuse inspection of records.** Every railway company, express company, or common carrier, and every officer or employee of any such company or common carrier, who neglects or refuses to produce and submit for inspection any book, record, or docu-

ment referred to in the next preceding section when requested to do so by the board or by a person so appointed by it shall be guilty of an offense against this act.

History: En. Sec. 79, Ch. 105, L. 1933.

4-214. (2815.139) **Description of offense—sufficiency of.** In describing the offense respecting the sale or keeping for sale or other disposal of liquor, or the having, keeping, giving, purchasing or the consumption of liquor in any information, summons, conviction, warrant, or proceeding under this act, it shall be sufficient to state the sale or keeping for sale or disposal, having, keeping, giving, purchasing, or consumption of liquor, simply without stating the name or kind of such liquor or the price thereof, or any person to whom it was sold or disposed of, or by whom it was taken or consumed, or from whom it was purchased or received, and it shall not be necessary to state the quantity of liquor so sold, kept for sale, disposed of, had, kept, given, purchased, or consumed, except in the case of offenses where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity.

History: En. Sec. 80, Ch. 105, L. 1933.

References
State v. Wiles, 98 M 577, 41 P 2d 8.

Collateral References
Intoxicating Liquors⇨248.
48 C.J.S. Intoxicating Liquors § 393.

4-215. (2815.140) **Description of offense—sufficiency—defenses need not be negatived.** The description of any offense under this act, in the words of this act or in any words of like effect, shall be sufficient in law; and any exception, exemption, provision, excuse, or qualification, whether it occurs by way of proviso or in the description of the offense in this act, may be proved by the defendant, but need not be specified or negatived in the information or complaint; but if it is so specified or negatived, no proof in relation to the matter so specified nor negatived shall be required on the part of the informant or complainant.

History: En. Sec. 81, Ch. 105, L. 1933.

References
State v. Wiles, 98 M 577, 41 P 2d 8.

Collateral References
Indictment and Information⇨110 (31).
42 C.J.S. Indictment and Information § 39.

4-216. (2815.141) **Sufficiency of evidence.** In any prosecution under this act for the sale or keeping for sale or other disposal of liquor, or the having, keeping, giving, purchasing, or consuming of liquor, it shall not be necessary that any witness should depose to the precise description or quantity of the liquor sold, disposed of, kept, had, given, purchased, or consumed, or the precise consideration (if any) received therefor, or to the fact of the sale or other disposal having taken place with his participation or to his own personal or certain knowledge; but conviction may be based upon circumstantial evidence reasonably tending to establish the guilt of the accused beyond a reasonable doubt.

History: En. Sec. 82, Ch. 105, L. 1933.

Collateral References
Intoxicating Liquors⇨236 (13).
48 C.J.S. Intoxicating Liquors § 371 et seq.
30 Am. Jur. 489, Intoxicating Liquors, § 443 et seq.

4-217. (2815.142) **Proof of violation — sufficiency.** In proving the sale, disposal, gift, or purchase, gratuitous or otherwise, or consumption of liquor, it shall not be necessary in any prosecution to show that any money actually passed or any liquor was actually consumed, if the court hearing the case is satisfied that a transaction in the nature of a sale, disposal, gift, or purchase actually took place, or that any consumption of liquor was about to take place; and proof of consumption or intended consumption of liquor on premises on which such consumption is prohibited, by some person not authorized to consume liquor thereon, shall be evidence that such liquor was sold or given to or purchased by the person consuming, or being about to consume, or carrying away the same, as against the occupant of the said premises.

History: En. Sec. 83, Ch. 105, L. 1933.

Collateral References
Intoxicating Liquors⊂⊃236.

48 C.J.S. Intoxicating Liquors § 341 et seq.
30 Am. Jur. 489, Intoxicating Liquors, § 443 et seq.

4-218. (2815.143) **Analyst's report as prima facie evidence of contents.** In any prosecution under this act, or the regulations made thereunder, production by a police officer, policeman, constable, inspector or peace officer, of a certificate or report signed or purporting to be signed by a United States or state analyst as to the analysis or ingredients of any liquor or other fluid or any preparation, compound, or substance, such certificate or report shall be prima facie evidence of the facts stated in such certificate or report and of the authority of the person giving or making the same without any proof of appointment or signature.

History: En. Sec. 84, Ch. 105, L. 1933.

Collateral References
Criminal Law⊂⊃429, 444.
23 C.J.S. Criminal Law § 844.

4-219. (2815.144) **Presumption of intoxicating liquor arises, when.** The court trying a case shall, in the absence of proof to the contrary, be at liberty to infer that the liquor in question is intoxicating from the fact that a witness described it as intoxicating, or by a name which is commonly applied to an intoxicating liquor.

History: En. Sec. 85, Ch. 105, L. 1933.

4-220. (2815.145) **Inferences from facts of act claimed to be violation.** Upon the hearing of any charge of selling or purchasing liquor, or of unlawfully having or keeping liquor, contrary to any of the provisions of this act, the court trying the case shall have the right to draw inferences of fact from the kind and quantity of liquor found in the possession of the person accused, or in any building, premises, vehicle, motorcar, automobile, vessel, boat, canoe, conveyance, or place occupied or controlled by him, and from the frequency with which liquor is received thereat or therein or is removed therefrom, and from the circumstances under which it is kept or dealt with.

History: En. Sec. 86, Ch. 105, L. 1933.

Collateral References
Criminal Law⊂⊃559.
23 C.J.S. Criminal Law § 902.

4-221. (2815.146) **Defendant to prove innocence, when.** If, on the prosecution of any person charged with committing an offense against this act, in selling or keeping for sale or giving or keeping or having or purchasing or receiving liquor, prima facie proof is given that such person had in his possession or charge or control any liquor in respect of or concerning which he is being prosecuted, then, unless such person proves that he did not commit the offense with which he is so charged, he may be convicted of the offense.

History: En. Sec. 87, Ch. 105, L. 1933.

4-222. (2815.147) **Burden of proof.** (1) The burden of proving the right to have or keep or sell or give or purchase or consume liquor shall be on the person accused of improperly or unlawfully having or keeping or selling or giving or purchasing or consuming such liquor.

(2) The burden of proving that any prescription or administration of liquor is bona fide and for medical purposes only shall be upon the person who prescibes or administers such liquor, or causes such liquor to be administered, and the court trying a case shall have the right to draw inferences of fact from the frequency with which similar prescriptions are given and from the amount of liquor prescribed or administered, and from the circumstances under which it is prescribed or administered.

History: En. Sec. 88, Ch. 105, L. 1933.

Collateral References

30 Am. Jur. 478, Intoxicating Liquors, § 420 et seq.

4-223. (2815.148) **District court to have jurisdiction of offenses.** The district courts shall have original jurisdiction in all criminal actions for violations of the provisions of this act, and in all civil actions for the recovery or enforcement of fines, penalties and forfeitures provided for in this act, and all such actions, both criminal and civil, shall be instituted, prosecuted and tried in the district court.

History: En. Sec. 2, Ch. 166, L. 1935.

Application of Section

This section does not give the district courts jurisdiction of criminal actions for a violation of section 4-413. State v. Holt, 121 M 459, 194 P 2d 651, 663.

Jurisdiction of District Court

By the provisions of this section original jurisdiction is conferred on the district court in all criminal actions arising out of violation of the State Liquor Control Act; hence a demurrer to an information charging such a violation, interposed on the ground that a misdemeanor being charged, jurisdiction was in a justice of the peace court, did not lie. State v. Driscoll, 101 M 348, 351, 54 P 2d 571.

Collateral References

Intoxicating Liquors⇨197.

48 C.J.S. Intoxicating Liquors § 110.

4-224. (2815.149) **Appeals.** An appeal shall lie from any conviction or order made in the prosecution of any offense against any of the provisions of this act and the practice and procedure on any appeal from any such conviction or order, and all proceedings thereon shall be governed by the law applicable to appeal in criminal cases.

History: En. Sec. 89, Ch. 105, L. 1933.

Collateral References

Intoxicating Liquors⇨241.

48 C.J.S. Intoxicating Liquors § 379.

30 Am. Jur. 501, Intoxicating Liquors, §§ 469, 470.

4-225. (2815.150) **Inspectors and prosecuting officers may be employed by board.** The board may appoint one or more inspectors or prosecuting officers, who, under its direction, shall perform such duties as it may require, and who shall be paid such salaries, fees and expenses as the said board may fix.

History: **En. Sec. 90, Ch. 105, L. 1933.**

Collateral References

Intoxicating Liquors⇨10, 61, 129.
48 C.J.S. Intoxicating Liquors § 212.

4-226. (2815.151) **Property and moneys acquired belong to state—expenses of administration, how paid.** All property, whether real or personal, all moneys acquired, administered, possessed or received by the board and all profits earned in the administration of this act, shall be the property of the state, and all expenses, debts and liabilities incurred by the board in connection with the administration of this act, shall be paid by the board from the moneys received by the board under such administration.

History: **En. Sec. 91, Ch. 105, L. 1933.**

Collateral References

Intoxicating Liquors⇨128.
48 C.J.S. Intoxicating Liquors § 211.

4-227. (2815.152) **Reports to state examiner—annual reports—contents.** (1) Effective July 1, 1949 the board shall from time to time make reports to the state examiner covering such matters in connection with administration or enforcement of this act as he may require, and shall annually make a report for the twelve months ending on the thirtieth day of June in the fiscal year in which the report is made, which shall contain—

(a) A statement of the nature and amount of the business transacted by each vendor under this act during the year;

(b) A statement of its assets and liabilities including a profit and loss account, and such other accounts and matters as may be necessary to show the result of operations of the board for the year;

(c) General information and remarks as to the working of the law within the state;

(2) Every annual report made under this section shall be forthwith laid before the legislature if the legislature is then in session, and if not then in session, shall be laid before the legislature within fifteen days after the opening of the next session.

(3) The books and records of the board shall be at all times subject to examination and audit by the state examiner or his duly authorized agents or employees.

History: **En. Sec. 92, Ch. 105, L. 1933; amd. Sec. 1, Ch. 86, L. 1949.**

Collateral References

Intoxicating Liquors⇨7.
48 C.J.S. Intoxicating Liquors § 33.

4-228. (2815.153) **Board to pay expenses of administering act.** The board shall make all payments necessary for the administration of this act, including the payment of the expenses of the members of the board and its staff, and all expenditures incurred in establishing and maintaining state liquor stores and in the administration of this act.

History: **En. Sec. 93, Ch. 105, L. 1933.**

References

Carey v. McFatridge, 115 M 278, 292, 142 P 2d 229.

4-229. (2815.154) **Disposition of money received.** All moneys received from the sale of liquor at the state liquor stores shall be deposited in the revolving fund in the state treasury to the credit of the board. The board is hereby authorized to purchase liquor from moneys deposited to its account in the revolving fund. The board shall transfer from its account in the revolving fund to its account in the earmarked revenue fund such moneys which are necessary to pay its administrative expense, subject to the limits imposed by legislative appropriation. No obligation created or incurred by the board shall ever be, or become, a debt or claim against the state of Montana, but shall be payable by the board solely from funds derived from the operation of state liquor stores. The board shall pay into the state treasury to the credit of the general fund the receipts from all taxes and licenses by it collected, and also the net proceeds from the operation of state liquor stores.

History: En. Sec. 94, Ch. 105, L. 1933; amd. Sec. 1, Ch. 54, L. 1939; amd. Sec. 211, Ch. 147, L. 1963.

Collateral References

Intoxicating Liquors⇐95.
48 C.J.S. Intoxicating Liquors § 188.

DECISIONS UNDER FORMER LAW

Purchase Contract Not Pledging State Credit

In an original declaratory judgment action by the state treasurer to determine his duties with regard to a $150,000 draft drawn upon him by the state liquor control board on funds deposited with him and raised by the board through participation of 127 state retail dealers to cover a down payment on 15,000 cases of liquor to meet a war emergency shortage, the state to take its mark-up and sell the liquor to the dealers, held, that the board's contract of purchase may not be held as a pledging of the state's credit in contravention of section 1, article XIII of the state constitution. Carey v. McFatridge, 115 M 278, 291, 142 P 2d 229.

4-230. (2815.155) **When balance sheet and profit and loss statement to be made.** The accounts of the board shall be made up for the fiscal year ending June 30 in each year. In every case the board shall prepare a balance sheet and statement of profit and loss and submit the same to the state controller.

History: En. Sec. 95, Ch. 105, L. 1933; amd. Sec. 2, Ch. 86, L. 1949; amd. Sec. 21, Ch. 249, L. 1967.

4-231. (2815.156) **Repealed—Chapter 147, Laws of 1963.**

Repeal

This section (Sec. 96, Ch. 105, L. 1933), relating to a reserve fund to be created from the profits, was repealed by Sec. 242, Ch. 147, Laws 1963.

4-232. (2815.158) **Orders for purchase of liquor—cancellation of orders.** Every order for the purchase of liquor shall be authorized by the secretary of the board and no order shall be valid or binding unless so authorized. A duplicate of every such order shall be kept at the principal office of the board. All cancellations of orders shall be executed in the same manner and a duplicate thereof kept as aforesaid.

History: En. Sec. 98, Ch. 105, L. 1933.

4-233. (2815.159) **Intent and construction of act.** The purpose and intent of this act are to prohibit transactions in liquor which take place

wholly within the state of Montana except under state control as specifically provided by this act, and every section and provision of this act shall be construed accordingly. The provisions of this act dealing with the importation, sale and disposition of liquor within the state through the instrumentality of a board and otherwise provide the means by which such state control shall be made effective, and nothing in this act shall be construed as forbidding, affecting or regulating any transaction which is not subject to the legislative authority of the state.

History: **En. Sec. 99, Ch. 105, L. 1933.**

References

State v. Holt, 121 M 459, 194 P 2d 651, 656; Alpha Industries, Inc. v. Montana Liquor Control Board, 146 M 23, 403 P 2d 606.

Collateral References

Statutes⇐179.

4-234. (2815.160) **Officers may administer oaths.** Every vendor may administer any oath and take and receive any affidavit or declaration required under this act or the regulations.

History: **En. Sec. 100, Ch. 105, L. 1933; amd. Sec. 14, 154, L. 1965.**

4-235. (2815.161) **Indebtedness may be created — limitation.** The board is hereby authorized to incur indebtedness in the administration of this act for necessary expenses and the acquisition of necessary property and merchandise, provided, however, that the total amount of outstanding indebtedness shall not at any time exceed the sum of twenty-five thousand dollars ($25,000.00) and provided further that any indebtedness so incurred by the board shall be paid solely out of the moneys arising in the administration of this act.

History: **En. Sec. 101, Ch. 105, L. 1933.**

4-236. (2815.162) **Declaration of time original regulatory acts became effective.** The State Liquor Control Act, originating as chapter 105, laws of the twenty-third legislative assembly of the state of Montana, 1933, approved March 13, 1933, became effective, in accordance with its terms, upon the ratification of amendment XXI to the constitution of the United States by proclamation and certification of the secretary of state of the United States of America, on December 5, 1933. The Montana Beer Act, originating as chapter 106, laws of the twenty-third legislative assembly of the state of Montana, 1933, approved March 14, 1933, became effective, in accordance with its terms, upon passage by the Congress of the Act approved March 22, 1933, 48 U. S. Statutes at Large, 17.

History: **En. Sec. 102, Ch. 105, L. 1933; amd. Sec. 2, Ch. 165, L. 1951.**

Collateral References

Statutes⇐250.

4-237. (2815.163) **Penalty for violations not otherwise provided for.** Anyone violating any of the provisions of this act shall be guilty of a misdemeanor and be subject to punishment not exceeding five hundred dollars ($500.00) fine, or six (6) months' imprisonment, either or both; except where other penalties or punishment is herein expressly provided.

History: **En. Sec. 103, Ch. 105, L. 1933.**

Construction of Section

This section and section 4-161 were in conflict with Sec. 1 of Laws 1927, Ch. 122

(11048.1 R. C. M. 1935) and repealed such section by implication. State v. Holt, 121 M 459, 194 P 2d 651; State v. Morrissey, 122 M 246, 199 P 2d 964.

Collateral References
Criminal Law⇨27, 1208.
22 C.J.S. Criminal Law §§ 6, 7.

4-238. Premises where liquor illegally sold common nuisance. Any room, house, building, boat, vehicle, structure or place where intoxicating liquor is knowingly manufactured, sold, or bartered, in violation of the State Liquor Control Act of Montana and all property knowingly kept and used in maintaining the same is hereby declared to be a common "nuisance," and any person who maintains such a common nuisance shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars ($100.00), nor more than five hundred dollars ($500.00) and by imprisonment not less than thirty days, nor more than six months.

History: En. Sec. 8, Ch. 30, L. 1937.

Collateral References
Intoxicating Liquors⇨143.
48 C.J.S. Intoxicating Liquors §§ 226-228.

4-239. Actions to enjoin nuisance—procedure. An action to enjoin any nuisance defined in this act, may be brought in the name of the state of Montana by the attorney general of the state or any county attorney. Such action shall be brought and tried as an action in equity, and may be brought in any court having jurisdiction to hear and determine equity cases. If it is made to appear by affidavits, or otherwise, to the satisfaction of the court or judge in vacation, that such nuisance exists, a temporary writ of injunction shall forthwith issue, restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the trial. If a temporary injunction is prayed for, the court may require from the applicant for such restraining order a bond in such sum as deemed advisable, if such application be made by a person other than a duly qualified and acting officer of the state or any political subdivision thereof and upon approval of such bond by the judge of said court issue an order restraining the defendant and all other persons from removing the fixtures or other things used in connection with the violation of this act, constituting such nuisance. Such action shall be prosecuted and tried in the same manner and the court shall grant the same relief as in suits to abate nuisances for violation of the Montana Beer Act.

History: En. Sec. 9, Ch. 30, L. 1937.

Collateral References
Intoxicating Liquors⇨258 et seq.
48 C.J.S. Intoxicating Liquors §§ 405, 407.
30 Am. Jur. 506, Intoxicating Liquors, § 482 et seq.

4-240. License tax on liquor—amount—distribution of proceeds. The Montana liquor control board is hereby authorized and directed to charge, receive and collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of four per centum (4%) of the retail selling price on all liquor so sold and delivered. Said tax shall be charged and collected on all liquor brought into the state and taxed by the Montana liquor control board. The retail selling price shall be computed by adding to the cost of said liquor the state mark-

up as designated by said board. Said four per centum (4%) license tax shall be figured in the same manner as the state excise tax and shall be in addition to said state excise tax. The Montana liquor control board shall retain the amount of such four per centum (4%) license tax so received in a separate account and shall apportion said license tax to the treasurers of the counties according to the amount of liquor sold by said board to the purchasers in each county. The Montana liquor control board shall pay quarterly to each county treasurer the proportion of the license tax due each county.

The county treasurer of each county shall retain one-fourth (¼) of said license tax, and shall, within thirty (30) days after receipt thereof, apportion the remaining three-fourths (¾) thereof to the treasurers of the incorporated cities and towns within his county, said apportionment to be based in each instance upon the proportion which the gross sale of liquor in such incorporated city or town bears to the gross sale of liquor in all of the incorporated cities and towns in his said county.

History: En. Sec. 1, Ch. 217, L. 1957.

Items Taxed

License and excise taxes are due and collectible only upon liquor purchased by the liquor control board at the time of sale and delivery to the board, and are not due and collectible upon materials, products and distilled spirits containing alcohol for manufacturing purposes. Alpha Industries, Inc. v. Montana Liquor Control Board, 146 M 23, 403 P 2d 606.

References

Hill v. Billings, 134 M 282, 328 P 2d 1112, 1116; State ex rel. City of Libby v. Haswell, 147 M 492, 414 P 2d 652.

Collateral References

Intoxicating Liquors⊂⇒95.
48 C.J.S. Intoxicating Liquors § 188.

4-241. Use of proceeds of license tax. The license tax moneys when so apportioned shall be deposited to the credit of the general funds of said incorporated cities and towns, and counties and shall be expended by said incorporated cities and towns, and counties for law enforcement and the regulation and control of the sale of liquor and the use thereof.

History: En. Sec. 2, Ch. 217, L. 1957.

CHAPTER 3

MONTANA BEER ACT—LICENSING SALE OF BEER UNDER SUPERVISION OF STATE LIQUOR CONTROL BOARD

Section 4-301. Citation of act—declaration of policy.
4-302. Definitions.
4-303. Closing hours for licensed retail beer establishments.
4-304. Sale of beer during closed hours forbidden—lawful business need not be closed.
4-305. Penalty.
4-306. Montana liquor control board to administer act.
4-307. Powers of board to make and enforce regulations.
4-308. Beer, when declared nonintoxicating—sales, when permitted.
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4-325. Penalty for brewer's failure to make returns—lien of taxes—enforcement—release.
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4-328. Sale of beer by retailer—consumption on premises.
4-329. Sale of beer by retailer for consumption off premises.
4-330. Purchase of beer by retailer—persons to whom beer may not be sold, delivered or given by brewers, wholesalers or retailers.
4-331. Repealed.
4-332. Special permits to sell beer—application and issuance—fee.
4-333. Issuance of retail beer licenses—limit on number of—off-premises beer licenses—lapse and cancellation.
4-334 to 4-336. Repealed.
4-337. Railroad car or carrier's license—application for and issuance of license—inspection—sale to persons under twenty-one years of age or disorderly person.
4-338. Purchase of beer must be from licensed brewer, wholesaler or retailer.
4-339. Qualifications of waiters to serve beer.
4-340. Repealed.
4-341. Fees for licenses—expiration dates—regulation by cities and towns.
4-342. Denial of application for license or renewal—suspension or revocation—actions.
4-343. Repealed.
4-344. Jurisdiction of courts.
4-345. Common nuisance defined—misdemeanor—lien on premises—disposal of beer to minors.
4-346. Action to enjoin nuisance—injunction—order of court—bond.
4-347. Revenue to be paid to state treasurer—disposition of revenue.
4-348. Repealing clause—purpose of act.
4-349. Brewers and wholesalers not to supply fixtures, etc., to retailers, except as specified—brewers not to be interested in retailer financially.
4-350. Election to determine whether or not beer should be sold in county to be ordered upon application of one-third of the voters.
4-351. Notice of election.
4-352. Ballots—what to contain.
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4-355. No election more than once in two years.
4-356. Election—how contested.
4-357. Annual reports and accountings by board on fiscal year basis.
4-358. Limitations on advertising of beer.

4-301. (2815.10) **Citation of act—declaration of policy.** This act may be cited as the "Montana Beer Act." It is hereby declared to be the policy of the state of Montana that the manufacture, transportation, distribution, sale and possession of "beer," as that term is hereinafter defined in this act and which contains not more than four per centum (4%) of alcohol by weight, shall be controlled and regulated by and under the provisions

of the "Montana Beer Act" and the "Montana Retail Liquor License Act." Beer, porter, ale, stout and malt liquors containing more than four per centum (4%) of alcohol by weight and which are defined as "liquor" by the "State Liquor Control Act of Montana," shall be subject to the regulations and controls provided by the "State Liquor Control Act of Montana," (section 4-101 through section 4-171, inclusive, Revised Codes of Montana, 1947, as amended) and the regulations and controls provided by the "Montana Retail Liquor License Act" (sections 4-401 through 4-441, inclusive, Revised Codes of Montana, 1947, as amended).

History: En. Sec. 1, Ch. 106, L. 1933; amd. Sec. 1, Ch. 166, L. 1951.

Compiler's Notes

Sections 4-123 to 4-132, 4-157, 4-162, 4-165, 4-166 and 4-168, contained in the reference in this section to sections 4-101 through 4-171, were repealed by Sec. 17, Ch. 154, Laws 1965. Section 4-155 was repealed by Sec. 1, Ch. 53, Laws 1949.

Sections 4-426 and 4-427, contained in the reference in this section to sections 4-401 through 4-441, were repealed by Sec. 2, Ch. 67, Laws 1955.

Cross-Reference

Effective date of Montana Beer Act, sec. 4-236.

Construction

This act, before 1951 amendment, and the State Liquor Control Act are in pari materia and must be construed together, and together with the amendments thereto are all one homogeneous and consistent body of law. Fletcher v. Paige, 124 M 114, 220 P 2d 484, 485, 19 ALR 2d 1108.

Police Regulation

This act and section 4-401 are police regulations enacted pursuant to the police powers of the state. The deeds prohibited are mala prohibita as distinguished from acts mala in se, and the only inquiry is: Has the law been violated? State v. Erlandson, 126 M 316, 249 P 2d 794, 797.

References

Beer Retailers Protective Assn. v. State Board of Equalization, 95 M 30, 32, 25 P 2d 128.

4-302. (2815.11) **Definitions.** In this act, the expression

(a) "Board" as used in this act means the Montana liquor control board, which shall administer the Montana Beer Act, under its provisions, without additional compensation.

(b) "Beer" means any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt and hops, or of any similar products, in drinkable water, containing not more than four per centum (4%) of alcohol by weight. Beer which is the subject of regulation and control under this, the Montana Beer Act is beer containing not more than four per centum (4%) of alcohol by weight.

(c) "Brewer" means any person having a factory or an establishment adapted for the making of beer.

(d) "Retailer" means any person engaged in the sale and the distribution of beer, either on draught or in bottles, or cans, to the public to be served and consumed on the premises of such retailer, or in the sale or distribution of beer to the public with intent that such beer shall be taken away from the premises of such retailer for consumption off such premises.

(e) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana, off and away from the premises of a brewery, and which structure is equipped with refrigeration or cooling apparatus for the storage of beer, and from which a brewer may sell or distribute beer as permitted by the Montana Beer Act.

(f) "This Act" or "this act" means the "Montana Beer Act" as amended or supplemented.

(g) "Vehicle" means any means of transportation by land or by water or by air and includes everything made use of in any way whatever for such transportation.

(h) "Warehouse" or "subwarehouse" means a building or structure owned or operated by a licensed wholesaler for the receiving, storage, and distribution of beer from such location, as permitted by the Montana Beer Act.

(i) "Wholesaler" means any person having a store or establishment for the sale and distribution of beer in wholesaling or jobbing quantities, or for the sale and distribution of beer in original packages to the public, with intent that such packages shall be delivered or taken away from the premises of such wholesaler in unbroken package for consumption off the premises of such wholesaler.

History: En. Sec. 2, Ch. 106, L. 1933; amd. Sec. 1, Ch. 46, Ex. L. 1933; amd. Sec. 6, Ch. 30, L. 1937; amd. Sec. 2, Ch. 166, L. 1951.

Application of Section

The definition of beer in this section was applicable throughout the State Liquor Control Act. Fletcher v. Paige, 124 M 114, 220 P 2d 484, 485, 19 ALR 2d 1108. (Decision prior to 1951 amendment.)

References

Beer Retailers Protective Assn. v. State Board of Equalization, 95 M 30, 32, 25 P 2d 128.

Collateral References

Intoxicating Liquors⚿44.
48 C.J.S. Intoxicating Liquors § 99.

4-303. Closing hours for licensed retail beer establishments. Hereafter all licensed establishments wherein beer as defined by subsection (b) of section 4-302, is sold, offered for sale or given away at retail shall be closed during the following hours:

(a) Sunday from two A. M. to one P. M.;

(b) On any other day between two A. M. and eight A. M.;

(c) On any day of a biennial general or primary election at which state and national officers are elected, during the hours when the polls are open, but not upon the day of any other election; provided, however, that when any municipal incorporation has by ordinance further restricted the hours of sale of beer, then the sale of beer is prohibited within the limits of any such city or town during the time such sale is prohibited by this act and in addition thereto during the hours that it is prohibited by such ordinance.

History: En. Sec. 1, Ch. 161, L. 1943; amd. Sec. 1, Ch. 162, L. 1959.

"Closed" Defined

The word "closed" means absolutely closed, to close off the front, sides, and rear of that part of a room which is used for the purpose of selling liquor. It makes no difference if any liquor is sold or not; the offense consists in its being open. State v. Perez, 126 M 15, 243 P 2d 309, 312.

Collateral References

Intoxicating Liquors⚿121.
48 C.J.S. Intoxicating Liquors § 207.

4-304. Sale of beer during closed hours forbidden—lawful business need not be closed. During the hours when the said licensed establishments where beer is sold at retail are required by this act to be closed, it shall be unlawful to sell, offer for sale or give away any beer, and during such hours all persons save employees of such licensed establishments shall

be excluded therefrom; provided, however, that when a licensed establishment is operated in conjunction with a hotel, restaurant, bus depot, railway terminal, or other lawful business other than that of the sale of intoxicating liquor or beer, then such other lawful business need not be closed, but only the part thereof where such beer or liquor is sold.

History: En. Sec. 2, Ch. 161, L. 1943.

Restaurant Business

Where the dining room is entirely separate from the bar room with a connecting door, this section is violated by keeping the bar room open after hours and allowing people to remain therein. The restaurant business may be conducted without using the bar room. State v. Perez, 126 M 15, 243 P 2d 309, 312.

4-305. Penalty. Any person violating any of the provisions of this act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 161, L. 1943.

4-306. Montana liquor control board to administer act. The power and authority to administer the Montana Beer Act, heretofore vested in the state board of equalization, is hereby transferred from the state board of equalization to the Montana liquor control board, and all power and authority in regard to the administration of the Montana Beer Act is hereby vested in the Montana liquor control board.

History: En. Sec. 7, Ch. 30, L. 1937.

References

Fletcher v. Paige, 124 M 114, 220 P 2d 484, 485, 19 ALR 2d 1108.

Collateral References

Intoxicating Liquors⇐129.
48 C.J.S. Intoxicating Liquors § 212.

4-307. (2815.12) **Powers of board to make and enforce regulations.** The board shall have power:

(a) To prescribe all forms of applications for licenses, forms of licenses, reports, returns, statements and other forms required by this act, or found necessary and proper by the board in the administration thereof.

(b) To make, adopt and promulgate rules and regulations:

(1) Relating to the labeling of containers of beer and the contents thereof, which rules and regulations may be uniform with the rules and regulations of the alcohol tax unit of the bureau of internal revenue of the United States of America, relating to labeling, and not inconsistent with the Montana Beer Act;

(2) Relating to, and prescribing standards of sanitation, cleanliness, and safety for all premises licensed for the consumption of beer on the premises, and the plumbing therein and therefor, toilets and restroom facilities, equipment, supplies, fixtures, beer-dispensing apparatus, and utensils on such premises, or used in connection with the dispensation and consumption of beer thereon; and

(3) Without limitation from the foregoing, such other and further regulations as are necessary and feasible for the purpose of carrying into

effect the provisions of the Montana Beer Act. Rules and regulations adopted by the board within the authority of this act, shall have the force and effect of law.

History: En. Sec. 3, Ch. 106, L. 1933; amd. Sec. 2, Ch. 46, Ex. L. 1933; amd. Sec. 3, Ch. 166, L. 1951.

Constitutionality

Delegation of power to the state board of equalization acting ex officio as beer board administering Montana Beer Act (4-301 et seq.) to make rules and regulations for the proper carrying into effect of the act, held not objectionable as a delegation of legislative power. State ex rel. Stewart v. District Court, 103 M 487, 500, 63 P 2d 141.

Power To Cancel Licenses

Since the act provides that the regulations shall have the force and effect of law, the board is authorized to cancel or suspend licenses upon the violation of any valid regulation. State ex rel. Stewart v. District Court, 103 M 487, 501, 63 P 2d 141.

Public Hearing Not Required

The beer control board is not required to hold public hearing at which testimony may be produced before it is authorized to suspend or revoke a retail beer license for alleged violation of its regulations; if upon such examination as it is authorized to make, it is satisfied that its regulations have been disregarded, it may, in its discretion, take action. State ex rel. Stewart v. District Court, 103 M 487, 501, 63 P 2d 141.

Writ of Prohibition Exceeded Jurisdiction

On application for writ of prohibition by the ex officio beer board to restrain the district court proceeding instituted by beer licensees to annul an order suspending their licenses, it was held that board did not exceed its jurisdiction in suspending licenses, but trial court in issuing order to show cause exceeded its jurisdiction. State ex rel. Stewart v. District Court, 103 M 487, 501, 63 P 2d 141.

References

Fletcher v. Paige, 124 M 114, 220 P 2d 484, 485, 19 ALR 2d 1108; Skaggs Drug Centers v. Montana Liquor Control Board, 146 M 115, 404 P 2d 511.

Collateral References

Intoxicating Liquors⇐7.
48 C.J.S. Intoxicating Liquors § 33.

4-308. (2815.13) **Beer, when declared nonintoxicating—sales, when permitted.** Beer containing one-half of one per cent (½ of 1%), or more, of alcohol by volume, and not more than three and two-tenths per cent (3.2%) of alcohol by weight, is hereby declared to be nonintoxicating, and such beer and other beer containing more than three and two-tenths per cent (3.2%), but not more than four per cent (4%) of alcohol by weight may be manufactured and/or sold or transported in and into this state or possessed therein in the manner and under the conditions prescribed in this act and not otherwise. The sale of beer by the Montana liquor control board is hereby prohibited, save and except ale, porter and stout containing more than four per cent (4%) of alcohol by weight.

History: En. Sec. 4, Ch. 106, L. 1933; amd. Sec. 1, Ch. 89, L. 1937; amd. Sec. 1, Ch. 186, L. 1947.

Collateral References

Intoxicating Liquors⇐134.
48 C.J.S. Intoxicating Liquors §§10, 217.
30 Am. Jur. 256, Intoxicating Liquors, § 8.

4-309. (2815.14) **Possession, manufacture or disposal of beer in other manner than prescribed unlawful.** It shall be unlawful to manufacture or sell, or dispose of, or possess for the purpose of sale, beer of any kind or character of an alcoholic content greater than herein prescribed, or other than in the manner permitted by this act.

History: En. Sec. 5, Ch. 106, L. 1933.

Collateral References

Intoxicating Liquors⇐137 et seq.
48 C.J.S. Intoxicating Liquors §§ 221, 280 et seq.

4-310. (2815.15) **Applications for sale or manufacture of beer—qualifications of applicant.** Any person, desiring to manufacture and sell beer under the provisions of this act, shall first apply to the board for a permit so to do and pay with such application the license fee herein prescribed; the board shall require of such applicant satisfactory evidence that the applicant is of good moral character and a law-abiding person. Upon being satisfied from such application, or otherwise, that such applicant is qualified as herein provided, the board shall issue such license to such person, which license shall be at all times prominently displayed in the place of business of such applicant. If the board shall find that such applicant is not qualified, no license shall be granted and such license fee shall be returned.

History: En. Sec. 6, Ch. 106, L. 1933.

References

Skaggs Drug Centers v. Montana Liquor Control Board, 146 M 115, 404 P 2d 511.

4-311. (2815.16) **Brewers' monthly report—power of board to inspect books and premises.** Every brewer, licensed to do business in this state, shall, on or before the fifteenth day of each month, make an exact return to the board of the amount of beer manufactured by him and the amount sold by him in the previous month, and of his inventory, in the manner and form as shall be prescribed by the board, and the board shall have the right at any time to make an examination of any brewer's books and of his premises, and otherwise check the accuracy of any such return, or to check the alcoholic content of beer manufactured by him.

History: En. Sec. 7, Ch. 106, L. 1933.

Collateral References

Intoxicating Liquors⇐79.
48 C.J.S. Intoxicating Liquors § 114.

4-312. (2815.17) **Penalty for brewers' failure to file statement.** Any such tax not paid within the time herein provided for shall be delinquent and a penalty of five per cent (5%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid, and any brewer who fails, neglects or refuses to make the return to the board provided for in section 4-311 hereof, or refuses to allow such examination, as provided for in section 4-311 hereof, or fails to make an accurate return according to the manner prescribed, shall be deemed guilty of having committed a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding one thousand dollars ($1000.00).

History: En. Sec. 8, Ch. 106, L. 1933; amd. Sec. 1, Ch. 220, L. 1939.

Collateral References

Intoxicating Liquors⇐94, 132.
48 C.J.S. Intoxicating Liquors §§ 27, 28, 30, 31, 56, 57, 187, 215, 218.

4-313. (2815.18) **Sale of beer by brewers—to whom.** It shall be lawful for any brewer to sell or dispose of beer manufactured by him to any wholesaler, retailer, club or common carrier holding and having a license under this act.

History: En. Sec. 9, Ch. 106, L. 1933; amd. Sec. 3, Ch. 46, Ex. L. 1933.

Collateral References

Landlord and Tenant⇐98 et seq.
52 C.J.S. Landlord and Tenant § 116 et seq.

4-314. (2815.19) **Sale by brewers to public.** It shall be lawful for any brewer to sell, deliver or distribute beer manufactured by him in original packages to the public with intent that such packages shall be delivered or taken away from the premises of such brewer in unbroken packages for consumption off the premises of such brewer.

History: En. Sec. 10, Ch. 106, L. 1933.

4-315. (2815.20) **Brewers not to retail beer, when.** It shall be unlawful for any brewer or breweries to have or own any permit to sell or retail beer at any place or premises; it being the declared intention to prohibit brewers from engaging in the retail dispensation of beer; provided, however, that this shall not be so construed as to prohibit breweries from making sale and delivery of beer by them manufactured in original packages at either wholesale or retail.

History: En. Sec. 11, Ch. 106, L. 1933.

4-316. (2815.21) **Repealed—Chapter 166, Laws of 1951.**

Repeal

This section (Sec. 12, Ch. 106, L. 1933), relating to the labeling of beer bottles and barrels, was repealed by sec. 12, Ch. 166, Laws 1951.

4-317. (2815.22) **Licenses of brewers—persons to whom brewers may sell beer—barrelage tax.** (1) Any brewer duly licensed as such by the United States of America, who manufactures beer in the state of Montana, upon payment of the annual license fee imposed by section 4-341 and upon presenting satisfactory evidence to the board as required by section 4-310, shall be licensed by the board in accordance with the provisions of this act and such regulations as may be prescribed by the board, to sell and deliver:

(a) Beer to a vendor;

(b) Beer to any licensees who are entitled to purchase beer from a brewer under this act; or

(c) Beer to the public, subject to the limitations and restrictions contained in this act; or to do any one or more of such acts of sale and delivery of beer.

(2) In addition to the annual license tax imposed by section 4-341, a tax of one dollar and fifty cents ($1.50) per barrel of thirty-one (31) gallons is hereby levied and imposed on each and every barrel of beer sold by any duly licensed brewer who manufactures beer in the state of Montana, which said barrelage tax shall be due at the end of each month and shall be payable with the brewer's monthly return or statement required to be made to the board under the provisions of section 4-311.

History: En. Sec. 13, Ch. 106, L. 1933; amd. Sec. 4, Ch. 46, Ex. L. 1933; amd. Sec. 4, Ch. 166, L. 1951; amd. Sec. 1, Ch. 135, L. 1959.

Collateral References

Intoxicating Liquors⇐99.
48 C.J.S. Intoxicating Liquors § 113.

4-317.1. Right of brewers to maintain and operate storage depots—annual licenses. It shall be lawful for any brewer duly licensed to manufacture beer in the state of Montana, upon the payment to the board of an

annual license fee, in addition to all other fees and taxes required to be paid by such brewer, of four hundred dollars ($400.00) for each storage depot, to own, lease, maintain and operate, in any city or town in the state of Montana, a building for use as a storage depot, equipped with refrigeration and cooling apparatus, for receiving, handling, and storing beer therein and distributing and selling beer therefrom, as brewers are permitted to sell and distribute beer under the provisions of this act.

History: **En. Sec. 6, Ch. 166, L. 1951.**

References

Alpha Industries, Inc. v. Montana Liquor Control Board, 146 M 23, 403 P 2d 606.

4-318. (2815.23) **Wholesalers' licenses—application for and issuance—subwarehouse—imported beer handled through warehouse or subwarehouse.** Any person desiring to sell and distribute beer as a wholesaler under the provisions of this act shall apply to the board for a license to do so and tender with his application the license fee hereinafter provided for and the board is hereby empowered, authorized and directed to issue one [1] wholesale license for every thirty (30) retail beer licenses figured on the number of retail beer licenses issued in the state to qualified applicants in accordance with the provisions of this act; such license shall be at all times prominently displayed in the place of business of such wholesaler.

To qualify for a wholesaler's license the applicant shall have been a resident of Montana for a period of five (5) years immediately prior to making application, or if said applicant is a Montana corporation said corporation shall have been organized for a period of five (5) years immediately prior to making application; provided, however, any individual or partnership which has been licensed as a beer wholesaler may, upon incorporation in accordance with the laws of the state of Montana, transfer such license to the corporation if a majority of the capital stock thereof is held by said individual or the members of said partnership; or if applicant is a foreign corporation said corporation shall have been authorized to do business in Montana for a period of five (5) years immediately prior to making application; and said applicant shall have a fixed place of business, sufficient capital, the facilities, storehouse, receiving house or warehouse for the receiving of, storage, handling and moving of beer in large and jobbing quantities for distribution and sale in original packages to other licensed wholesalers or licensed retailers. Each wholesaler shall be entitled to only one (1) wholesale license, which license shall be issued for his principal place of business in Montana; a duplicate license may be issued for one (1) subwarehouse only in Montana for each wholesale licensee, which said duplicate license shall at all times be prominently displayed at said subwarehouse; licenses already issued which are in excess of said limitations and which are of issue on the date of the passage and approval of this act, shall be renewable, but no new wholesale beer licenses shall be issued until the number of licenses shall be reduced to within the above limitation.

All beer manufactured outside of the state of Montana and shipped into Montana shall be consigned to and shipped to a licensed wholesaler, and by him unloaded into his warehouse in Montana or subwarehouse

in Montana; said wholesaler shall distribute said beer from such warehouse or subwarehouse; said wholesaler shall keep records at his principal place of business of all beer including the name or kind received, on hand, sold and distributed; said records may at all times be inspected by any member or representative of the board; any beer which has been shipped into Montana and has not been shipped to and distributed from a warehouse of a licensed wholesaler shall be seized by any peace officer or representative of the board and may be confiscated in the manner as provided for the confiscation of intoxicating liquor.

History: En. Sec. 14, Ch. 106, L. 1933; amd. Sec. 5, Ch. 46, Ex. L. 1933; amd. Sec. 1, Ch. 246, L. 1947; amd. Sec. 5, Ch. 166, L. 1951; amd. Sec. 1, Ch. 222, L. 1965.

Collateral References
Intoxicating Liquors⇐63-65.
48 C.J.S. Intoxicating Liquors § 143.

4-319. (2815.24) **Monthly report of wholesaler.** Every wholesaler, licensed to do business in this state, as herein provided, shall on or before the fifteenth day of each month, make an exact return to the board of the amount of beer manufactured in this state, sold and delivered by him, and also of the amount of beer manufactured in places outside of the state, sold and delivered by him, during the previous month, and of his inventory in the manner and form as shall be prescribed by the board, and the board shall have the right at any time to make an examination of the said wholesaler's books and of his premises, and otherwise check the accuracy of such return or to check the alcoholic content of beer which he may have on hand.

History: En. Sec. 15, Ch. 106, L. 1933.

4-320. (2815.25) **Penalty for wholesalers' failure to file statement—payment of tax.** With such return, the said wholesaler shall pay to the board the amount of tax upon all beer not manufactured in this state, on the basis hereinafter provided, which shall have been sold by him during such previous month. Any such tax not paid within the time herein provided for shall be delinquent and a penalty of five per cent (5%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid, and any wholesaler who fails, neglects or refuses to make the return to the board provided for in section 4-319, or refuses to allow such examination as provided for in section 4-319, or fails to make an accurate return according to the manner prescribed, shall be deemed guilty of having committed a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding one thousand dollars ($1,000.00).

History: En. Sec. 16, Ch. 106, L. 1933; amd. Sec. 2, Ch. 220, L. 1939.

Collateral References
Intoxicating Liquors⇐94, 132.
48 C.J.S. Intoxicating Liquors §§ 27, 28, 30, 31, 56, 57, 187, 215, 318.

4-321. (2815.26) **To whom wholesaler may sell.** It shall be lawful for any wholesaler to sell and deliver beer purchased or acquired by him to a wholesaler, retailer, club or to a common carrier, holding and having a license under this act.

History: En. Sec. 17, Ch. 106, L. 1933; amd. Sec. 6, Ch. 46, Ex. L. 1933.

Collateral References

Intoxicating Liquors⇐98 et seq.

48 C.J.S. Intoxicating Liquors § 109 et seq.

4-322. (2815.27) **When wholesaler may sell to public.** It shall be lawful for any wholesaler to sell, deliver or distribute any beer purchased or acquired by him to the public in the original packages of quantities not less than two (2) gallons, with the intent that such packages shall be taken away from the premises of such wholesaler in unbroken packages for consumption off the premises of such wholesaler.

History: En. Sec. 18, Ch. 106, L. 1933; amd. Sec. 7, Ch. 46, Ex. L. 1933.

References

Beer Retailers Protective Assn. v. State Board of Equalization, 95 M 30, 32, 25 P 2d 128.

4-323. (2815.28) **Consumption of beer on wholesalers' premises unlawful.** It shall be unlawful for any wholesaler to sell, serve or give away any beer to be consumed on such wholesaler's premises.

History: En. Sec. 19, Ch. 106, L. 1933.

4-324. (2815.29) **Tax on imported beer—computation in case of barrels of capacity other than thirty-one gallons.** A tax of one dollar and fifty cents ($1.50) per barrel of thirty-one (31) gallons, is hereby levied and imposed on each and every barrel of beer manufactured out of this state and sold herein by any wholesaler, which said tax shall be due at the end of each month from said wholesaler, upon any such beer so sold by him during that month. As to any beer imported and sold in containers other than barrels, or in barrels of more or less capacity than thirty-one (31) gallons, the quantity content shall be ascertained and computed by the board in determining the amount of tax due, as herein provided for.

History: En. Sec. 20, Ch. 106, L. 1933; amd. Sec. 8, Ch. 46, Ex. L. 1933; amd. Sec. 2, Ch. 135, L. 1959.

48 C.J.S. Intoxicating Liquors § 181 et seq.

30 Am Jur. 309, Intoxicating Liquors, § 99.

Collateral References

Intoxicating Liquors⇐90 et seq.

4-325. Penalty for brewer's failure to make returns—lien of taxes—enforcement—release. If any brewer subject to the payment of the tax provided for in subdivision (3) [(2)] of section 4-317 or any wholesaler subject to the payment of the tax provided for in section 4-324, shall fail, neglect or refuse to make any return required by Montana Beer Act, or shall fail to make payment of such tax within the time herein provided, the board shall, forthwith after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such return and from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of such tax due the state from such delinquent brewer or wholesaler and shall add thereto a penalty of five per cent (5%) thereof for the first failure, willful neglect or refusal; ten per cent (10%) for the second; fifteen per cent (15%) for the third; and twenty-five per cent (25%) for the fourth, and each subsequent failure, neglect or refusal, which shall be

in addition to the five per cent (5%) penalty hereinbefore provided for nonpayment of such tax within the time hereinbefore provided. Said tax and the penalties added thereto shall bear interest at the rate of one per cent (1%) per month from the date such returns should have been made and said tax paid. The board shall then proceed to collect such tax with penalties and interest. Upon request of the board it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect such tax. All taxes due from any brewer or wholesaler under the provisions of Montana Beer Act, together with all penalties and interest thereon, shall be a lien upon any and all property of such brewer or wholesaler upon the filing by the board of a duplicate copy of the statement so made by the board, or a certified copy of any return filed with said board, in the office of the county clerk of the county where such property is situated, which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and may be enforced in the name of the state of Montana in the same manner as other liens are enforced by law. No action shall be maintained to enjoin the collection of such tax or any part thereof. When the amount due the state is paid in full and before the entry of foreclosure decree, the board shall release the said lien by filing in the office of the county clerk wherein is filed the said lien a written release thereof. At any time prior to the payment of said taxes, penalty and interest, before the entry of foreclosure decree, the board may release from the operation of said lien a part of said property to enable the brewer or wholesaler to mortgage, sell or otherwise dispose of the same in order to procure funds with which to pay said taxes, penalty and interest, provided there remains, in the judgment of the board, sufficient property subject to said lien to ensure the payment of the whole of said unpaid taxes, penalty and interest.

History: En. Sec. 3, Ch. 220, L. 1939.

48 C.J.S. Intoxicating Liquors §§ 186, 187.

Collateral References

Intoxicating Liquors⇐93, 94.

4-326. Carriers' reports of beer transported. Every railroad and every motor carrier transporting beer manufactured out of this state from points without this state and delivering the same to points within this state shall, on or before the fifteenth day of each month, make an exact return to the board of the amount of such beer so transported and delivered by such railroad or motor carrier during the previous month, and shall state in such return the name and address of the consignor, the name and address of the consignee, the date of delivery, and the amount delivered.

History: En. Sec. 4, Ch. 220, L. 1939.

Collateral References

Intoxicating Liquors⇐112¼.

48 C.J.S. Intoxicating Liquors § 208.

4-327. (2815.30) **Retailers' license—application and issuance—display required—check of alcoholic content by board.** Any person desiring to possess and have for sale beer, under the provisions of this act, for the purpose of selling it at retail, shall first apply to the board for a permit so to do and tender with such application the license fee herein provided for. Upon being satisfied from such application or otherwise that the applicant

is qualified as herein provided, the board shall issue a license to such person, which license shall at all times be prominently displayed in the place of business of the applicant. If the board shall find that the applicant is not qualified, no license shall be granted and the license fee tendered shall be by the board returned. The board shall have the right and is hereby given authority to make, at any time, an examination of the books of account of any such retailer and of his premises and otherwise check his methods of conducting business and the alcoholic contents of the beer kept by him for sale.

History: En. Sec. 28, Ch. 106, L. 1933; amd. Sec. 9, Ch. 46, Ex. L. 1933.

Qualifications for License

Montana liquor control board was not empowered by the terms of the Montana Beer Act (4-301 et seq.) to establish the policy that grocery stores are the only "fit and proper person, firm or corporation to sell beer" and thereby deny a corporation operating a chain of drugstores a license to sell retail beer for off-premise consumption. Skaggs Drug Centers v. Montana Liquor Control Board, 146 M 115, 404 P 2d 511.

References

State ex rel. Stewart v. District Court, 103 M 487, 501, 63 P 2d 141.

Collateral References

Intoxicating Liquors⇨55 et seq.

48 C.J.S. Intoxicating Liquors §§ 105, 122, 125, 128, 132 et seq.

30 Am. Jur. 306, Intoxicating Liquors, § 93 et seq.

4-328. (2815.31) **Sale of beer by retailer—consumption on premises.** It shall be lawful for such retailer to sell and serve beer either on draught or in bottles to the public to be consumed on the premises of such retailer.

History: En. Sec. 29, Ch. 106, L. 1933.

Cross References

Bartenders, waiters and waitresses, age of employment, secs. 41-1135, 41-1136.

Entertainment forbidden, secs. 94-3570, 94-3571.

4-329. (2815.32) **Sale of beer by retailer for consumption off premises.** It shall be lawful for such retailer to sell or furnish beer to the public with intent that such beer shall be taken away from the premises of such retailer for consumption off the premises of such retailer.

History: En. Sec. 30, Ch. 106, L. 1933; amd. Sec. 10, Ch. 46, Ex. L. 1933; amd. Sec. 1, Ch. 177, L. 1961.

Collateral References

Intoxicating Liquors⇨99 et seq.

48 C.J.S. Intoxicating Liquors § 109 et seq.

4-330. (2815.33) **Purchase of beer by retailer—persons to whom beer may not be sold, delivered or given by brewers, wholesalers or retailers.** It shall be unlawful for such retailer to purchase or acquire beer from anyone except a brewer or wholesaler licensed under the provisions of this act.

It shall be unlawful for any brewer, wholesaler or retailer, his or her employee or employees to sell, deliver or give away, or cause or permit to be sold, delivered or given away, any beer to:

1. Any person under the age of twenty-one (21) years;

2. Any intoxicated person or any person actually, apparently or obviously intoxicated;

3. An habitual drunkard; or

4. An interdicted person.

Any brewer, wholesaler or retailer violating any of the provisions of this section, shall upon conviction thereof be subject to the penalties provided for in section 4-305 of the Montana Beer Act, and in addition thereto the license of any such brewer, wholesaler or retailer shall, in the discretion of the board, be immediately revoked, or said license may be suspended for a period of not more than three (3) months. Any minor, Indian or other person who knowingly misrepresents his or her qualification for the purpose of obtaining beer from any licensee shall be equally guilty with said licensee and shall, upon conviction thereof, be subject to the penalty provided in section 4-305 of the Montana Beer Act.

History: En. Sec. 31, Ch. 106, L. 1933; amd. Sec. 11, Ch. 46, Ex. L. 1933; amd. Sec. 7, Ch. 166, L. 1951.

Construction of Section

This section as amended by chapter 166, Laws 1951 did not repeal by implication sections 94-35-106 and 94-35-106.1. State v. Winter, 129 M 207, 285 P 2d 149, 156.

Ostensible Agency

A conviction of the owner of a tavern for a violation of this section and section 4-345 may be had when a barmaid at the tavern sold beer to minors, although the barmaid was not on the defendant's payroll, because defendant knew that she acted at times as barmaid and operated the tavern when the manager was gone, and the defendant reaped all the benefits of such sales and remained silent. There was ample evidence tending to show at the very least, an ostensible agency. State v. Erlandson, 126 M 316, 249 P 2d 794, 795.

References

Skaggs Drug Centers v. Montana Liquor Control Board, 146 M 115, 404 P 2d 511.

Collateral References

Intoxicating Liquors⇐119.
48 C.J.S. Intoxicating Liquors § 200.

4-331. (2815.34) **Repealed—Chapter 166, Laws of 1951.**

Repeal

This section (Sec. 32, Ch. 106, L. 1933; Sec. 12, Ch. 46, Ex. L. 1933), relating to club licenses, was repealed by Sec. 12, Ch. 166, Laws 1951.

4-332. (2815.35) **Special permits to sell beer—application and issuance—fee.** (1) Any fair association or corporation maintaining or operating a place for the exhibition of livestock or agricultural or horticultural products, or for the exhibition of races or rodeos, charging an admission fee thereto, shall in the discretion of the board be entitled to a special permit to sell beer to the patrons of such exhibition to be consumed within the exhibition enclosure.

The application of any such association or corporation shall describe the location of such enclosure wherein such exhibition is held, the nature of such exhibition, the period when it is contemplated that the same will be held. Such application shall be accompanied by the amount of the permit fee hereinafter provided.

The permit issued to such fair association or corporation shall be a special permit, but shall not authorize the sale of beer except starting one (1) day in advance of the regular period when exhibitions for which a fee is charged are being held upon such grounds and during the exhibition period described in such application, and for one (1) day thereafter.

The permit fee shall be at the rate of ten dollars ($10.00) per day for each day beer is to be sold, or sold but in no event less than the sum of twenty-five dollars ($25.00), hereby fixed as the minimum fee for such permit.

(2) Any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, not otherwise licensed under this act, shall in the discretion of the board, without notice or hearing as provided in section 4-407.1, be entitled to a special permit to sell beer at such post or lodge, to members and their guests only, to be consumed within the hall or building of such post or lodge.

The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal organization shall describe the location of the hall or building where the special permit shall be used and the date it will be used. Such application shall be accompanied by a permit fee of five dollars ($5.00).

The special permit issued shall be for a twenty-four (24) hour period ending at 2 a.m. only and the board shall not issue more than twelve (12) such permits to any such post or lodge during a calendar year.

History: En. Sec. 13, Ch. 46, Ex. L. 1933; amd. Sec. 1, Ch. 235, L. 1963.

4-333. (2815.36) **Issuance of retail beer licenses—limit on number of —off-premises beer licenses—lapse and cancellation** (1) Except as otherwise provided by law, a license to sell beer at retail in accordance with the provisions of this act and the regulations of the Montana liquor control board, may be issued to any person, firm or corporation who shall be approved by a majority of the board as a fit and proper person, firm or corporation to sell beer; provided, that the number of retail beer licenses that the board may issue shall be determined as follows:

(a) The number of retail beer licenses that the board may issue for premises situated within incorporated cities and incorporated towns and within a distance of five (5) miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by Congress, to wit: In incorporated towns of five hundred (500) inhabitants or less and within a distance of five (5) miles from the corporate limits of such towns, not more than two (2) retail beer licenses to be used in conjunction with retail liquor licenses and not more than one (1) additional retail beer license which shall not be used in conjunction with a retail liquor license; in incorporated cities or incorporated towns of more than five hundred (500) inhabitants and not over two thousand (2000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities or towns, two (2) retail beer licenses for the first five hundred (500) inhabitants and one (1) retail beer license for each additional five hundred (500) inhabitants, which said retail beer licenses shall be used in conjunction with retail liquor licenses, and one (1) additional beer license for each five hundred (500) inhabitants which said beer license shall not be used in conjunction with retail liquor licenses; in incorporated cities of over two thousand (2000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities, five (5) retail beer licenses for the first two thousand (2000) inhabitants and one (1) retail beer license for each additional one thousand (1000) inhabitants which said retail beer licenses shall be used in conjunction with retail liquor licenses, and

two (2) additional retail beer licenses for the first two thousand (2000) inhabitants or major fraction thereof and one (1) additional retail beer license for each additional two thousand (2000) inhabitants which shall not be used in conjunction with retail liquor licenses. The number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of five (5) miles from the corporate limits thereof, shall govern the number of retail beer licenses that may be issued for use within such cities and towns and within a distance of five (5) miles from the corporate limits thereof; provided, that where two (2) or more incorporated municipalities are situated within a distance of five (5) miles from each other, the total number of retail beer licenses that may be issued for use in both of such municipalities and within a distance of five (5) miles from their respective corporate limits, shall be determined on the basis of the combined populations of both of such municipalities and shall not exceed the foregoing limitations. The said distance of five (5) miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town. Retail beer licenses of issue on the date of the passage and approval of this act and which are in excess of the foregoing limitations shall be renewable, but no new licenses shall be issued in violation of such limitations; provided, that such limitations shall not prevent the issuance of a nontransferable and nonassignable retail beer license to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, if such veterans' or fraternal organization has been in existence for a period of five (5) years or more prior to January 1, 1949. No incorporated city or incorporated town may by ordinance restrict the number of licenses that the board may issue; provided that no retail beer license may be issued by the board for any premises situated within any zone of such city or town wherein the sale of beer is prohibited by ordinance, a certified copy of which has been filed with the board. The board shall have discretion to deny the issuance of a retail beer license if it shall determine that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(b) The number of retail beer licenses that the board may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of five (5) miles from the corporate limits thereof, or for use at premises situated within any unincorporated town shall be as determined by the board in the exercise of its sound discretion; provided, that no retail beer license shall be issued for any premises so situated unless the board shall determine that the issuance of such license is required by public convenience and necessity.

(2) A retail license to sell beer in the original packages for off-premise consumption only may be issued to any person, firm or corporation who shall be approved by a majority of the board as a fit and proper person, firm or corporation to sell beer and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of such licenses that the board may issue

shall not be limited by the provisions of subsection (1) of this section, but shall be determined by the board in the exercise of its sound discretion, and the board may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause. The annual license fee for a license to sell beer at retail for off-premises consumption shall be the same as for a retail beer license.

(3) From and after February 1, 1949, any retail license issued pursuant to this act (including any retail license to sell beer for off-premises consumption), not actually used in a going establishment for a period of ninety (90) days, shall automatically lapse. Upon determining the fact of nonuser for such period the board shall cancel such license of record and no portion of the fee paid therefor shall be refundable. The provisions of this subsection shall not apply to the license of any licensee whose premises are operated on a seasonal basis in connection wtih a bona fide dude ranch, resort, park hotel, tourist facility or like business, provided such licensee has secured written authority from the board to close his licensed premises for a specified period of greater than ninety (90) days' duration, and providing further that should the liquor control board determine that such lapse was reasonably beyond the control of the licensee, then the lapse provision set out above shall not apply.

History: En. Sec. 14, Ch. 46, Ex. L. 1933; amd. Sec. 1, Ch. 225, L. 1947; amd. Sec. 1, Ch. 165, L. 1949; amd. Sec. 1, Ch. 55, L. 1955; amd. Sec. 1, Ch. 205, L. 1959; amd. Sec. 1, Ch. 271, L. 1965.

Qualifications for License

Montana liquor control board was not empowered by the terms of the Montana Beer Act (4-301 et seq.) to establish the policy that grocery stores are the only "fit and proper person, firm or corporation to sell beer" and thereby deny a corporation operating a chain of drugstores a license to sell retail beer off-premise consumption. Skaggs Drug Centers v. Montana Liquor Control Board, 146 M 115, 404 P 2d 511.

References

State ex rel. Stewart v. District Court, 103 M 487, 500, 63 P 2d 141; State ex rel. Jester v. Paige, 123 M 301, 213 P 2d 441.

Collateral References

Intoxicating Liquors⇨71.
48 C.J.S. Intoxicating Liquors § 157.

4-334 to 4-336. (2815.37 to 2815.39) **Repealed—Chapter 166, Laws of 1951.**

Repeal

These sections (Secs. 33 to 35, Ch. 106, L. 1933), relating to club licenses, were repealed by Sec. 12, Ch. 166, Laws 1951.

4-337. (2815.40) **Railroad car or carrier's license—application for and issuance of license—inspection—sale to persons under twenty-one years of age or disorderly person.** Any person maintaining or operating any railroad car or train as a common carrier for the transportation of passengers, or any other person operating a buffet or dining car for any common carrier, desiring to sell beer under the provisions of this act, shall first apply to the board for a permit so to do, accompanying the application with the license fee herein prescribed. Upon being satisfied from said application or otherwise that the applicant is qualified under the provisions of this act, the board shall issue a license for the sale of beer by such person, which shall at all times be prominently displayed in the car, operated by the applicant, wherein beer or malt liquors are served. The board shall have the right at any time to make an inspection of the train

or cars operated by any railway company in this state, to ascertain whether this act is being strictly complied with, and if not, the board is authorized and empowered to cancel such license, after which the sale of any beer or malt liquors by any such common carrier, or other person operating buffet or dining car for such common carrier, shall be unlawful and subject to the penalties herein prescribed. And it shall be unlawful for any such common carrier, or other person operating buffet or dining car for such common carrier, to sell beer or malt liquors to any person under the age of twenty-one (21) years or who may appear to be in an intoxicated or disorderly condition.

History: En. Sec. 36, Ch. 106, L. 1933; amd. Sec. 3, Ch. 246, L. 1947.

Collateral References

30 Am. Jur. 312, Intoxicating Liquors, § 105.

4-338. (2815.41) **Purchase of beer must be from licensed brewer, wholesaler or retailer.** It shall be unlawful for the operator of any such railroad train, as a common carrier, or its employees, to make sale of or dispose of any beer or malt liquors except such as shall have been lawfully acquired or purchased from a brewer, wholesaler or retailer duly licensed.

History: En. Sec. 37, Ch. 106, L. 1933.

4-339. (2815.42) **Qualifications of waiters to serve beer.** No licensee under the provisions of this act shall employ or permit any person, either as a waiter or waitress, to serve beer to patrons, unless possessed of good moral character.

History: En. Sec. 40, Ch. 106, L. 1933.

References

Skaggs Drug Centers v. Montana Liquor Control Board, 146 M 115, 404 P 2d 511.

4-340. (2815.43) **Repealed—Chapter 55, Laws of 1955.**

Repeal

This section (Sec. 44, Ch. 106, L. 1933), relating to the powers of the Montana liquor control board to issue retail beer licenses to retailers outside of cities, towns and villages, was repealed by Sec. 2, Ch. 55, Laws 1955.

4-341. (2815.44) **Fees for licenses—expiration dates—regulation by cities and towns.** Each licensee, under the provisions of this act, shall pay an annual license fee as follows:

Each "brewer," wherever located, whose product is sold or offered for sale within the state, five hundred dollars ($500.00);

Each "wholesaler" four hundred dollars ($400.00);

Each "retailer" two hundred dollars ($200.00);

Any unit of a nationally chartered veterans' organization fifty dollars ($50.00);

Each "vehicle" being a common carrier of passengers, or other persons operating buffet and dining cars for such common carrier, twenty-five dollars ($25.00).

All licenses issued in any year shall expire on the 30th day of June at midnight of such year. A transfer of any such license may be made on application to the Montana liquor control board with the consent of the said board provided that said transferee shall qualify under this act.

The cities and incorporated towns may enact ordinances defining certain areas in said cities or towns where beer may or may not be sold providing that said ordinance does not affect the limit of retail beer licenses which shall be issued by the Montana liquor control board based upon the population of the city or town and said city or town shall file a certified copy of said ordinance with the Montana liquor control board; the cities and towns may also impose a fee on a licensee of the board for selling beer at retail in the city or town providing said fee shall be reasonable and not in excess of the amount imposed by the state. This act shall not be construed or interpreted so as to repeal, amend, modify, change, or alter any provisions of the Montana Beer Act which require beer manufactured outside of the state of Montana and shipped into Montana to be consigned to and shipped to a licensed wholesaler and by him unloaded into his warehouse or subwarehouse in Montana.

History: En. Sec. 45, Ch. 106, L. 1933; amd. Sec. 15, Ch. 46, Ex. L. 1933; amd. Sec. 2, Ch. 246, L. 1947; amd. Sec. 1, Ch. 122, L. 1963.

Power of City Council to Limit Number of Beer Parlors

A city council could properly limit the number of places in the city where beer and liquor at retail might be sold, and then refuse to issue a license to the assignee of a state liquor control board license, and in doing so was not depriving him of property without due process of law. (11-904) State ex rel. McIntire v. City of Libby, 107 M 216, 219, 82 P 2d 587, explained in 119 M 368, 376, 175 P 2d 408.

Pre-emption

Cities do not have the authority or jurisdiction to enact ordinances dealing with the control of sales of liquor since the state has exclusive authority in that matter, so that where defendant was charged with selling beer to a minor, city police court had no jurisdiction to try the offense and it had to be brought either in the justice of the peace court or in the district court. State ex rel. City of Libby v. Haswell, 147 M 492, 414 P 2d 652.

References

Stephens v. City of Great Falls, 119 M 368, 175 P 2d 408, 414.

Collateral References

Intoxicating Liquors⇨91.

48 C.J.S. Intoxicating Liquors §§ 183, 184.

30 Am. Jur. 295, Intoxicating Liquors, § 72 et seq.

4-342. (2815.45) **Denial of application for license or renewal—suspension or revocation—actions.** The board may (1) upon its own motion and shall (2) upon a written, verified complaint of any person, investigate the action and operation of any brewer, wholesaler or retailer licensed under the Montana Beer Act. If the board, after investigation, shall have reasonable cause to believe that any such licensee has violated any of the provisions of this act, or any rules, or regulations of the board, it may, in its discretion, and in addition to the other penalties herein prescribed, proceed to revoke the license of any such licensee, or it may suspend the same for a period of not to exceed three (3) months, or it may refuse to grant a renewal of said license upon the expiration thereof, under the procedures herein provided. If the board shall, in its sound discretion, determine to invoke such procedures for the purpose of refusing to grant a license or refusing to grant a renewal thereof to any applicant, or for revoking or suspending any license previously granted, it shall give applicant or licensee, as the case may be, fifteen (15) days' notice in writing of its intended action, addressed and forwarded by registered mail to the applicant or licensee at the address given in the application for license, or upon the existing license, as the case may be, stating generally the

basis and reasons for its intended action and the proposed action. Within said fifteen (15) day period said applicant or licensee may, in cases of intention to refuse to grant a license, or intention to refuse to grant a renewal thereof, institute proceedings in the nature of a writ of review, or, in case of intention to revoke or suspend a license, institute proceedings in injunction, and in any event in the district court of the county wherein the premises of applicant or licensee are located for the purpose of having the intended action of the board judicially reviewed and inquired into for (a) abuse of discretion on the part of the board, (b) failure of the board to observe, or its departure from, or disregard of the applicable law governing the board in the particular circumstances, or (c) for arbitrary or tyrannical action by the board. The board shall in all cases certify to the court its complete record in the matter and the issues shall be heard on the merits by the court upon such record and upon such further legal evidence as the parties may present. If the court in any such proceedings determines that such licensee has, in fact, violated any provisions of this act or any regulations of the board, the court shall dismiss such proceedings, and the board shall proceed to such administrative determination as to it seems proper in the circumstances. Pending determination of such matter on the merits the court may, based upon a showing of undue hardship to a licensee and upon the posting of a proper bond in an amount, and conditioned upon such terms as the court may prescribe in the presence of the surrounding circumstances, stay the effective date of the intended action of the board for such time as to the court may seem proper. If no stay order is issued by the court or any stay order once issued has expired, the board shall issue its order of suspension or of revocation of license or its order denying the license applied for, or renewal thereof. If the court shall, on the other hand, determine that good cause did not exist for the intended action of the board, or that the board abused its discretion, or otherwise acted unlawfully with respect to its intended action, on any of the grounds herein stated, the court shall issue its order and decree accordingly and the board shall comply therewith. Either party to the proceedings in the district court may appeal from its decision to the supreme court of the state of Montana, by following the procedures applicable to such appeals in civil actions.

History: En. Sec. 46, Ch. 106, L. 1933; amd. Sec. 8, Ch. 166, L. 1951.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

Limitation of Actions

Licensee, whose license was revoked for nonuse, was barred from relief by his failure to take action within fifteen days after receipt of notice from the liquor control board. State ex rel. Gillespie v. Montana Liquor Control Board, — M —, 430 P 2d 112.

Review of Agency Action

The principal reason for the enactment of this section was to afford to any person, original applicant or otherwise, appearing before the liquor control board, the right to have the agency's actions reviewed judicially for abuse of discretion, e.g., actions not in conformity to the law and arbitrary and tyrannical action. Skaggs Drug Centers v. Montana Liquor Control Board, 146 M 115, 404 P 2d 511.

Collateral References

Intoxicating Liquors⇦106 (1-5).

48 C.J.S. Intoxicating Liquors § 175.

30 Am. Jur. 329, Intoxicating Liquors, §§ 142-149.

Right to hearing before revocation of suspension of liquor license. 35 ALR 2d 1067.

DECISIONS UNDER FORMER LAW

Refers to Premises and Books of Account

Under the rule of statutory construction that a relative clause must be construed to relate to the nearest antecedent that makes sense, held that the provision of this section relative to cancellation or suspension of beer licenses when provisions of act were violated by licensee, refers to examination of books of account of the retailer and the premises occupied by him in doing business mentioned in section 4-327. State ex rel. Stewart v. District Court, 103 M 487, 501, 63 P 2d 141.

4-343. (2815.46) **Repealed—Chapter 166, Laws of 1951.**

Repeal

This section (Sec. 47, Ch. 106, L. 1933), relating to appeals to district court from refusal of board to grant or from order revoking or suspending license, was repealed by Sec. 12, Ch. 166, Laws 1951. For present provisions, see sec. 4-342.

4-344. (2815.47) **Jurisdiction of courts.** The district courts of this state shall have concurrent jurisdiction with justice of the peace courts in all prosecutions under this act.

History: En. Sec. 48, Ch. 106, L. 1933; amd. Sec. 16, Ch. 46, Ex. L. 1933; amd. Sec. 9, Ch. 166, L. 1951.

Construction of Section

This section expressly confers upon the district courts concurrent original jurisdiction with justice courts in prosecutions for violations of the Montana Beer Act. State v. Winter, 129 M 207, 285 P 2d 149, 156.

References

State ex rel. City of Libby v. Haswell, 147 M 492, 414 P 2d 652.

Collateral References

Intoxicating Liquors⇐131 et seq.

48 C.J.S. Intoxicating Liquors §§ 214, 236, 268, 280 et seq.

30 Am. Jur. 502, Intoxicating Liquors, § 471 et seq.

4-345. (2815.48) **Common nuisance defined — misdemeanor — lien on premises—disposal of beer to minors.** Any room, house, building, boat, vehicle, structure, or place where beer is manufactured, sold, or bartered in violation of this act, and all property kept and used in maintaining the same, is hereby declared to be a common nuisance, and any person who maintains such a common nuisance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars ($100.00), nor more than five hundred dollars ($500.00), and be imprisoned not less than thirty (30) days nor more than six (6) months. If a person has knowledge or reason to believe that his room, house, building, boat, vehicle, structure, or place is occupied or used for the manufacture or sale of beer contrary to the provisions of this act, and suffers the same to be so occupied or used, such room, house, building, boat, vehicle, structure, or place shall be subject to a lien for and may be sold to pay all fines and costs assessed against the person guilty of such nuisance for such violation, and any such lien may be enforced by action in any court having jurisdiction. Any person whomsoever whether a licensee or not, who shall without the corporate limit of any city or town, permit minors to congregate and sell or give away to said minors beer or other liquors shall be deemed guilty of maintaining a nuisance and shall be subject to all the provisons of this section.

History: En. Sec. 48, Ch. 106, L. 1933; amd. Sec. 16, Ch. 46, Ex. L. 1933.

Ostensible Agency

A conviction of the owner of a tavern for a violation of this section and section

4-330 may be had when a barmaid at the tavern sold beer to minors, although the barmaid was not on the defendant's payroll, because defendant knew that she acted at times as barmaid and operated the tavern when the manager was gone, and the defendant reaped all the benefits of such sales and remained silent. There was ample evidence tending to show at the very least, an ostensible agency. State v. Erlandson, 126 M 316, 249 P 2d 794, 795.

Collateral References

Intoxicating Liquors⇐143, 260.

48 C.J.S. Intoxicating Liquors §§ 226-228, 405-408.

30 Am. Jur. 506, Intoxicating Liquors, § 482 et seq.

4-346. (2815.49) **Action to enjoin nuisance—injunction—order of court—bond.** An action to enjoin any nuisance defined in this act may be brought in the name of the state of Montana by the attorney general of the state or by any county attorney. Such action shall be brought and tried as an action in equity and may be brought in any court having jurisdiction to hear and determine equity cases. If it is made to appear by affidavits or otherwise, to the satisfaction of the court, or judge in vacation, that such nuisance exists, a temporary writ of injunction shall forthwith issue restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the trial. If a temporary injunction is prayed for, the court may issue an order restraining the defendant and all other persons from removing or in any way interfering with the fixtures or other things used in connection with the violation of this act constituting such nuisance. No bond shall be required in instituting such proceedings. It shall not be necessary for the court to find the property involved was being unlawfully used as aforesaid at the time of the hearing, but on finding that the material allegations of the petition are true, the court shall order that no beer shall be manufactured, sold, or bartered in such room, house, building, boat, vehicle, structure, or place, or any part thereof. And upon judgment of the court ordering such nuisance to be abated, the court may order that the room, house, building, structure, boat, vehicle, or place shall not be occupied or used for one (1) year thereafter; but the court may, in its discretion, permit it to be occupied or used if the owner, lessee, tenant, or occupant thereof shall give bond with sufficient surety, to be approved by the court making the order, in the penal and liquidated sum of not less than five hundred dollars ($500.00), nor more than one thousand dollars ($1,000.00), payable to the state of Montana, and conditioned that beer will not thereafter be manufactured, sold or bartered therein or thereon, and that he will pay all fines, costs, and damages that may be assessed for any violations of this act upon said property.

History: En. Sec. 48, Ch. 106, L. 1933; amd. Sec. 16, Ch. 46, Ex. L. 1933.

Collateral References

Intoxicating Liquors⇐267 et seq.

48 C.J.S. Intoxicating Liquors § 405 et seq.

30 Am. Jur. 506, Intoxicating Liquors, § 482 et seq.

4-347. (2815.50) **Revenue to be paid to state treasurer—disposition of revenue.** All fees, charges, taxes and revenues collected by or under authority of the Montana liquor control board, under the Montana Beer Act shall be paid over to the state treasurer on or before the tenth day of each and every month who shall deposit said funds to the credit of the state general fund.

History: En. Sec. 49, Ch. 106, L. 1933; amd. Sec. 17, Ch. 46, Ex. L. 1933; amd. Sec. 20B, Ch. 109, L. 1935; amd. Sec. 9, Ch. 14, L. 1941; amd. Sec. 1, Ch. 121, L. 1949; amd. Sec. 20, Ch. 249, L. 1967.

References

State ex rel. State Aeronautics Commission v. Board of Examiners, 121 M 402, 194 P 2d 633, 638.

Collateral References

Intoxicating Liquors⇐95.
48 C.J.S. Intoxicating Liquors § 188.

4-348. Repealing clause — purpose of act. That sections 2295.28, 2303.12, 2355.9, 2408.9, 2815.157, 3645, 10400.44, 10400.49 Revised Codes of Montana 1935, section 29 chapter 84, section 7 of chapter 91, subsection 1 of section 11 of chapter 87, section 9 of chapter 94, section 11 of chapter 199 and section 7 of chapter 201 Session Laws of Montana 1937, and all other acts and parts of acts in conflict herewith are hereby repealed; it being the purpose and intent of this act that the licenses, fees, taxes and revenues specifically enumerated and described in sections 84-1901, 84-1902 and 79-601 shall be deposited by the state treasurer to the credit of the state general fund and that no money shall be drawn from such fund but in pursuance of specific appropriations made by law, in conformity with the provisions of section 10 of article XII of the constitution of the state of Montana.

History: En. Sec. 10, Ch. 14, L. 1941.

4-349. (2815.51) **Brewers and wholesalers not to supply fixtures, etc., to retailers, except as specified—brewers not to be interested in retailer financially.** (a) It shall be unlawful for any brewer or wholesaler to lease, furnish, give or pay for any premises, furniture, fixtures, equipment, signs, or any other advertising matter or any other property to any retail licensee, used or to be used in the dispensation of beer in and about the interior or exterior of the place of business of any licensed retailer or furnish, give or pay for any repairs, improvements, painting or decorating on or within such premises; provided, however, that it shall be lawful for a brewer or wholesaler to furnish, give or loan to a retail licensee:

1. Bottle openers, can openers and trays, with or without advertising matter thereon;

2. Advertising matter or novelties, of a value of not to exceed fifteen dollars ($15.00) in any calendar year, to any one (1) retailer for display use on the interior of said retailer's place of business; and

3. Not more than two (2) illuminated or electrical signs, each of not more than six hundred thirty (630) square inches in area, which signs may bear the name, brand name, trade name, trade-mark or other designation indicating the name of the manufacturer, and the place of manufacture, of beer, for display by the retail licensee on and within the interior of his place of business, or in the windows inside the place of business of the licensed retailer, and only if the particular brand of beer so advertised on such signs is actually available for sale on the licensee's premises, at the time of such display.

(b) No brewer or wholesaler shall advance or loan money to, or furnish money for, or pay for or on behalf of any retailer, for any license or tax

which may be required to be paid for any retailer, and no brewer or wholesaler shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer, as herein defined. A brewer or wholesaler shall be deemed to have such a financial interest within the meaning of this section if (1) such brewer or wholesaler owns or holds any interest in, or a lien or mortgage against the retailer or his premises; or (2) if such brewer or wholesaler is under any contract with a retailer concerning future purchases and/or sale of merchandise by one from, or to the other; (3) if any retailer holds an interest as a stockholder, or otherwise, in the business of the wholesaler.

(c) No sale or delivery of beer shall be made to any retail licensee, except for cash paid within seven (7) days after the delivery thereof, and in no event shall any brewer or wholesaler extend more than seven (7) days' credit on account of such beer to a retail licensee, nor shall any retail licensee accept or receive delivery of such beer without agreement to pay in cash therefor within seven (7) days from delivery thereof. A correctly dated check which is honored upon presentment shall be considered as cash within the meaning of this act. Any extension or acceptance of credit in violation hereof shall be regarded and construed as rendering or receiving financial assistance, and the licenses of both brewers, wholesalers and retail licensees involved in violation hereof shall be suspended or revoked, as determined by the board in its discretion.

History: En. Sec. 18, Ch. 46, Ex. L. 1933; amd. Sec. 10, Ch. 166, L. 1951; amd. Sec. 1, Ch. 51, L. 1955; amd. Sec. 1, Ch. 110, L. 1959; amd. Sec. 1, Ch. 49, L. 1967.

4-350. (2815.53) **Election to determine whether or not beer should be sold in county to be ordered upon application of one-third of the voters.** Upon application by petiton, signed by one-third (1/3) of the voters who are qualified to vote for members of the legislative assembly in any county in the state, the board of county commissioners must order an election to be held at the places of holding elections for county officers, to take place within forty (40) days after the reception of such petiton, to determine whether or not the sale of beer as herein provided for shall be permitted within the limits of the county. No election, under this section must take place in any month in which the general elections are held. It shall be the duty of the board of county commissioners to determine the sufficiency of the petitions presented from an examination of the roll of qualified electors within the county.

History: En. Sec. 50, Ch. 106, L. 1933.

References

State ex rel. McCarten v. Harris, 112 M 344, 351, 115 P 2d 292.

Collateral References

Intoxicating Liquors⇐24 et seq.

48 C.J.S. Intoxicating Liquors § 58 et seq.

30 Am. Jur. 341, Intoxicating Liquors, § 167 et seq.

4-351. (2815.54) **Notice of election.** The notice of election must be published once a week for four (4) weeks in such newspapers of the county where the election is to be held as the board of county commissioners may think proper.

History: En. Sec. 51, Ch. 106, L. 1933.

Collateral References

Intoxicating Liquors⇐33.

48 C.J.S. Intoxicating Liquors § 82.

4-352. (2815.55) **Ballots—what to contain.** The county clerk must furnish the ballots to be used at such election, as provided in the general election laws, which ballots must contain the following words: "Sale of beer, yes"; "Sale of beer, no." And the elector in order to vote must mark an "X" opposite one (1) of the answers.

History: En. Sec. 52, Ch. 106, L. 1933.

48 C.J.S. Intoxicating Liquors § 84 et seq.

Collateral References

Intoxicating Liquors⊂=34.

4-353. (2815.56) **Election—how held.** The polling places must be established, the judges and other officers to conduct the election must be designated, and the election must be held, canvassed and returned in all respects in conformity to the general election laws of the state of Montana.

History: En. Sec. 53, Ch. 106, L. 1933.

4-354. (2815.57) **Effect when vote is against sale of beer.** If a majority of the votes cast are against the sale of beer the board of county commissioners must publish the result once a week for four (4) weeks in the newspapers in which the notices of election were published, and from the date of the election no further licenses to vend beer in the county shall be issued by the board of equalization, and after the publication of notice proclaiming the result of the election is against the sale of beer, all licenses then existing shall be canceled by the state board of equalization, and thereafter it shall be unlawful to sell any beer in any such county.

History: En. Sec. 54, Ch. 106, L. 1933.

4-355. (2815.58) **No election more than once in two years.** No election shall be held in the same county oftener than once in any two (2) years.

History: En. Sec. 55, Ch. 106, L. 1933.

Collateral References

Intoxicating Liquors⊂=31.
48 C.J.S. Intoxicating Liquors § 73.

4-356. (2815.59) **Election—how contested.** Any election held under the provisions of this act may be contested in the same manner as other elections under the laws of this state.

History: En. Sec. 56, Ch. 106, L. 1933.

Collateral References

Intoxicating Liquors⊂=37.
48 C.J.S. Intoxicating Liquors § 87.

4-357. Annual reports and accountings by board on fiscal year basis. Effective July 1, 1949, all annual reports and accountings to be compiled or prepared by the Montana liquor control board, under the Montana Beer Act, shall be compiled or prepared on the basis of the state fiscal year of July 1, 1949, to June 30, 1950, and each successive fiscal year.

History: En. Sec. 2, Ch. 121, L. 1949.

Collateral References

Intoxicating Liquors⊂=7.
48 C.J.S. Intoxicating Liquors § 33.

4-358. Limitations on advertising of beer. It shall be lawful to advertise beer containing not more than four per centum (4%) of alcohol by

weight, as herein defined and regulated, subject to (a) the restrictions on brewers contained in section 4-349 of this act, and subject to (b) the restrictions on retailers, to wit: No retail licensee under the Montana Beer Act shall display, or permit to be displayed, on the exterior portion or surface of such retailer's place of business, or on the exterior portion or surface of any building of which said place of business is a part, or on any premises adjacent thereto, whether any of such premises be owned or leased by the retailer, any sign, poster or advertisement bearing the name, brand name, trade name, trade-mark or other designation indicating the manufacturer, brewer, wholesaler or place of manufacture, of any beer whatsoever.

History: **En. Sec. 11, Ch. 166, L. 1951.**

Collateral References

Intoxicating Liquors⇨110.
48 C.J.S. Intoxicating Liquors § 191.

CHAPTER 4

MONTANA RETAIL LIQUOR LICENSE ACT—SALES BY LICENSEES OF BOARD

Section 4-401. Declaration of policy as to retail sale of liquor.
4-402. Definitions.
4-403. Issuance of retail liquor licenses—limit on number of licenses—retail wine licenses—lapse and cancellation.
4-404. License fee for retail sale of liquor within and without cities and towns of designated populations—census of population.
4-405. Half year license fee for sale of beer or liquor to June 30, 1944.
4-406. Fee for and expiration of licenses after July 1, 1944.
4-407. Application for license—penalty for false statements.
4-407.1. Notice of application—publication—protest.
4-408. Investigation of application.
4-409. License to sell liquor in railroad dining and buffet cars.
4-409.1. Special permits to sell liquor—application and issuance—fee.
4-410. Contents of license—posting—privilege—transfer—expiration.
4-411. Limit one license to person—beer license, when required.
4-412. Persons disqualified for license.
4-413. Persons to whom liquor may not be sold or given.
4-414. Hours for sale of liquor.
4-415. Restrictions on proximity of premises to churches and schools.
4-416. Board to sell to licensees—posted price.
4-417. Excise liquor tax—collection.
4-418. Duplicate invoices of sales required.
4-419. Sale of liquor not purchased from state store forbidden—penalty.
4-420. Penalty for sale of alcoholic liquor without license.
4-421. Sale of liquor at less than posted price forbidden.
4-422. Employees of board not to deal in liquor.
4-423. Officers may seize illicit liquor—forfeiture.
4-424. Board to make rules and regulations—forms—records.
4-425. Denial of application for license or renewal—suspension or revocation—actions.
4-426. Repealed.
4-427. Repealed.
4-428. Officers may examine premises.
4-429. Renewal of suspended licenses.
4-430. City and county licenses—fees.
4-431. Act when effective—protests—elections.
4-432. Publication notice of election.
4-433. Form of ballots.
4-434. Polling places—conduct of elections.
4-435. Effect of election—penalty—liquor store sales not affected.
4-436. Contest of election.
4-437. Restriction on holding second election.

4-438. Business in name of licensee—federal permits required.
4-439. Penalty for violating act—revocation of license.
4-440. Saving clause—scope of act.
4-441. Limitation on effect of repeal.

4-401. Declaration of policy as to retail sale of liquor. It is hereby declared as the policy of the state that it is necessary to further regulate and control the sale and distribution within the state of alcoholic beverages, and to eliminate certain illegal traffic in liquor now existing, and to ensure the entire control of the sale of liquor in the Montana liquor control board, it is advisable and necessary, in addition to the operation of the state liquor stores now provided by law, that the said board be empowered and authorized to grant licenses to persons qualified under this act, to sell liquor purchased by them at state liquor stores at retail posted price in accordance with this act and under rules and regulations promulgated by the said board, and under its strict supervision and control, and to provide severe penalty for the sale of liquor except by and in state liquor stores and by persons licensed under this act. The restrictions, regulations and provisions contained in this act are enacted by the legislature for the protection, health, welfare and safety of the people of the state.

History: En. Preamble, Ch. 84, L. 1937.

NOTE.—Chapter 84, Laws 1937 was referred to the people by petition and was approved at the general election held Nov. 8, 1938. (Page 731, Laws 1939.)

Constitutionality

The Liquor Control Act, allocating 50 per cent of license fees to state public school fund, and 50 per cent thereof to the public welfare fund, is not an act relating to appropriations of public moneys and therefore not exempt from referendum; an "allocation" or apportionment to certain funds not doing away with the necessity of making an appropriation by legislative authority; and that failure to state that enactment is necessary for the immediate preservation of the public health, etc. does not alone effect referability, but referability is a question for the courts, immediate necessity being an essential condition. (Section 1, article V of the constitution.) State ex rel. Haynes v. District Court, 106 M 470, 476, 480, 78 P 2d 937.

Police Regulation

This act and section 4-301 are police regulations enacted pursuant to the police powers of the state. The deeds prohibited are mala prohibita as distinguished from acts mala in se, and the only inquiry is: Has the law been violated? State v. Erlandson, 126 M 316, 249 P 2d 794, 797.

Pre-emption

Cities do not have the authority or jurisdiction to enact ordinances dealing with the control of sales of liquor since the state has adopted exclusive control of that function, so that where defendant was charged with selling beer to a minor, city police court had no jurisdiction to try the offense and it had to be brought either in the justice of the peace court or in the district court. State ex rel. City of Libby v. Haswell, 147 M 492, 414 P 2d 652.

Purpose of Act

It is the people of the state of Montana who are to be protected in their "health, welfare and safety" by the act and by the rules and regulations promulgated by the liquor control board and not the people of any other state. Perry v. Luding, 123 M 570, 217 P 2d 207, 214.

References

Light v. Zeiter, 124 M 67, 219 P 2d 295, 300; Gill v. Rafn, 133 M 505, 326 P 2d 974; State ex rel. Geschwender v. La Rowe, 136 M 591, 341 P 2d 906; Beard v. McCormick, 147 M 361, 411 P 2d 964.

Collateral References

Intoxicating Liquors⇨110.

48 C.J.S. Intoxicating Liquors § 191.

30 Am. Jur. 396, Intoxicating Liquors, §§ 267-358.

4-402. Definitions. The following words and phrases used in this act shall be given the following interpretation:

1. "Board" means the Montana liquor control board.

2. "Club" means a national fraternal organization, except college fraternities, or an association of individuals organized for social purposes and not for profit, with a permanent membership and an existence of two years prior to making application for license with permanent quarters or rooms.

3. "State liquor store" means a liquor store established and operated by the Montana liquor control board under the laws of Montana.

4. "License" means a license issued by the Montana liquor control board to a qualified person, under which it shall be lawful for the licensee to sell and dispense liquor at retail as provided in this act.

5. "Licensee" means the person to whom a license is issued.

6. "Person" means every individual, copartnership, corporation, hotel, restaurant, club and fraternal organization, and all licensed retailers of liquor, whether conducting the business singularly or collectively.

7. "Liquor" means all kinds of liquor sold by and/or in a state liquor store.

8. "Interdicted person" means a person to whom the sale of liquor is prohibited under the laws of Montana.

9. "Rules and regulations" means rules and regulations made and promulgated by the Montana liquor control board in accordance with the provisions of this act.

All other words and phrases used in this act, the definition of which is not herein given, shall be given the ordinary meaning.

History: En. Sec. 2, Ch. 84, L. 1937.

Rules and Regulations of Board Must Conform to Statutes

The state liquor control board is an administrative body; it has no law-making power, and while it is authorized to make rules and regulations, they must be limited in their purpose and effect as an aid in the administration of the law of its creation, and any such rules and regulations calculated to widen the scope of the law and extend the board's discretionary powers to matters beyond the purview of the act are void and of no effect. McFatridge v. District Court, 113 M 81, 87, 122 P 2d 834.

References

Perry v. Luding 123 M 570, 217 P 2d 207, 215; Light v. Zeiter, 124 M 67, 219 P 2d 295, 300; State ex rel. Geschwender v. La Rowe, 136 M 591, 341 P 2d 906.

Collateral References

Intoxicating Liquors⇐45.

48 C.J.S. Intoxicating Liquors §§ 103, 115.

4-403. Issuance of retail liquor licenses—limit on number of licenses—retail wine licenses—lapse and cancellation. (1) Except as otherwise provided by law, a license to sell liquor at retail in accordance with the provisions of this act and the regulations of the Montana liquor control board, may be issued to any person who shall be approved by a majority of the board as a fit and proper person to sell liquor; provided, that the number of retail liquor licenses which the board may issue shall be determined as follows:

(a) The number of retail liquor licenses that the board may issue for premises situated within incorporated cities and incorporated towns and within a distance of five (5) miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by Congress, to wit: In incorporated towns of five hundred (500) inhabitants or less and within a distance of five (5) miles from the corporate limits of such

towns, not more than two (2) retail liquor licenses; in incorporated cities or incorporated towns of more than five hundred (500) inhabitants and not over three thousand (3000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities and towns, three (3) retail liquor licenses for the first one thousand (1000) inhabitants and one (1) retail liquor license for each additional one thousand (1000) inhabitants; in incorporated cities of over three thousand (3000) inhabitants and within a distance of five (5) miles from the corporate limits thereof, five (5) retail liquor licenses for the first three thousand (3000) inhabitants and one (1) retail liquor license for each additional one thousand five hundred (1500) inhabitants. The number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of five (5) miles from the corporate limits thereof, shall govern the number of retail liquor licenses that may be issued for use within such cities and towns and within a distance of five (5) miles from the corporate limits thereof; provided, however, that where two (2) or more incorporated municipalities are situated within a distance of five (5) miles from each other, the total number of retail liquor licenses that may be issued for use in both of such municipalities and within a distance of five (5) miles from their respective corporate limits, shall be determined on the basis of the combined populations of both of such municipalities and shall not exceed the foregoing limitations. The said distance of five (5) miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town. Retail liquor licenses of issue on the date of the passage and approval of this act and which are in excess of the foregoing limitations shall be renewable, but no new licenses shall be issued in violation of such limitations; provided that such limitations shall not prevent the issuance of a nontransferable and nonassignable (as to ownership only) retail liquor license to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, if such veterans' or fraternal organization has been in existence for a period of five (5) years or more prior to January 1, 1949. No incorporated city or incorporated town may by ordinance restrict the number of licenses that the board may issue; provided that no retail license may be issued by the board for any premises situated within any zone of a city or town wherein the sale of liquor is prohibited by ordinance, a certified copy of which has been filed with the board. The board shall have discretion to deny the issuance of a retail license if it shall determine that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(b) The number of retail liquor licenses that the board may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of five (5) miles from the corporate limits thereof, shall be not more than one (1) license for each seven hundred fifty (750) population of the county, after excluding the population of incorporated cities and incorporated towns in such county.

(2) From and after February 1, 1949, any retail license issued pursuant to this act not actually used in a going establishment for a period of ninety (90) days, shall automatically lapse. Upon determining the fact of nonuser for such period the board shall cancel such license of record and no portion of the fee paid therefor shall be refundable. The provisions of this subsection shall not apply to the license of any licensee whose premises are operated on a seasonal basis in connection with a bona fide dude ranch, park hotel, tourist facility or like business, provided such licensee has secured written authority from the board to close his licensed premises for a specified period of greater than ninety (90) days' duration, and providing further that should the liquor control board determine that such lapse was reasonably beyond the control of the licensee, then the lapse provision set out above shall not apply.

History: En. Sec. 3, Ch. 84, L. 1937; amd. Sec. 1, Ch. 226, L. 1947; amd. Sec. 1, Ch. 164, L. 1949; amd. Sec. 1, Ch. 144, L. 1951; amd. Sec. 1, Ch. 56, L. 1955; amd. Sec. 1, Ch. 206, L. 1959; amd. Sec. 1, Ch. 217, L. 1963.

Limitation of Actions

Licensee, whose license was revoked for nonuse, was barred from relief by his failure to take action within fifteen days after receipt of notice from the liquor control board. State ex rel. Gillespie v. Montana Liquor Control Board, — M —, 430 P 2d 112.

Nonuse of License

Licenses under this section lapse automatically if not used for ninety days. State ex rel. Gillespie v. Montana Liquor Control Board, — M —, 430 P 2d 112.

The statutory ninety-day nonuse period could not be avoided by opening bar to the public for few hours of one day. State ex rel. Gillespie v. Montana Liquor Control Board, — M —, 430 P 2d 112.

Power of Council to Limit Number of Places

A city council could properly limit the number of places in the city where beer and liquor at retail might be sold, and then refuse to issue a license to the assignee of a state liquor control board license, and in doing so was not depriving him of property without due process of law. (11-904) State ex rel. McIntire v. City of Libby, 107 M 216, 219, 82 P 2d 587, explained in 119 M 368, 376, 175 P 2d 408.

Quota on Liquor Licenses

Where hotel and bar were leased for a period of five years at time when there was no quota on liquor licenses and contract provided for return of the property to lessor upon expiration of lease but made no mention of transfer of liquor license, lease could not be reformed in equity to include provison for transfer of liquor license where quota law had been enacted prior to expiration of lease. Sullivan v. Marsh, 124 M 415, 225 P 2d 868, distinguished in 147 M 361, 364, 411 P 2d 964, 965.

Suitable Premises Required—Rules of Board—Discretion

This section is limited by subsection 5 of section 4-412 and possession of suitable premises is a qualification which the applicant must possess in order to be entitled to a license. Among other things, the test of suitability of premises should be established by rule made, promulgated and published as provided by section 4-424 and not left to the caprice and whim of the board. In making the investigation of an application, as provided in section 4-408, the board has discretion to determine if all qualifications exist, but if it finds that they do exist, it has no discretion to refuse a license for extraneous reasons. State ex rel. McCarten v. Harris, 112 M 344, 348, 115 P 2d 292.

Under above rules, fact that majority of inhabitants of a town and vicinity may be opposed to granting of a license does not constitute a reason for refusal of the license by the board. State ex rel. McCarten v. Harris, 112 M 344, 348, 115 P 2d 292.

References

McFatridge v. District Court, 113 M 81, 87, 122 P 2d 834; State v. Holt, 121 M 459, 194 P 2d 651, 660; State ex rel. Jester v. Paige, 123 M 301, 213 P 2d 441; Perry v. Luding, 123 M 570, 217 P 2d 207, 214; Light v. Zeiter, 124 M 67, 219 P 2d 295, 300; State ex rel. City of Libby v. Haswell, 147 M 492, 414 P 2d 652.

Collateral References

Intoxicating Liquors⇐46½.

48 C.J.S. Intoxicating Liquors § 130.

30 Am. Jur. 295, Intoxicating Liquors, §§ 72-163.

Grant or renewal of liquor license as affected by fact that applicant held such license in past. 2 ALR 2d 1239.

DECISIONS UNDER FORMER LAW

Issuance of Licenses a Ministerial Act

The statute "directing" state liquor control board to issue retail beer and liquor licenses to qualified applicants makes the issuance of such licenses to qualified applicants mandatory. State ex rel. McCarten v. Corwin, 119 M 520, 177 P 2d 189, 197.

Applicant who was qualified to operate establishment, had suitable premises and met all requirements of law and valid board regulations was entitled to licenses as matter of right and board could not consider attitude of residents of a community as expressed by city ordinance. State ex rel. McCarten v. Corwin, 119 M 520, 177 P 2d 189, 197.

4-404. License fee for retail sale of liquor within and without cities and towns of designated populations—census of population. Each licensee licensed under the provisions of this act shall pay an annual license fee as follows:

(a) Except as hereinafter provided, for each license outside of incorporated cities and incorporated towns, or in incorporated cities and incorporated towns with a population of less than two thousand (2,000), two hundred ($200.00) dollars per annum;

(b) Except as hereinafter provided, for each license in incorporated cities with a population of more than two thousand (2,000) and less than five thousand (5,000), three hundred ($300.00) dollars per annum; or within a distance of five (5) miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, three hundred ($300.00) dollars per annum;

(c) Except as hereinafter provided, for each license in incorporated cities with a population of more than five thousand (5,000) and less than ten thousand (10,000), or within a distance of five (5) miles thereof, measused in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, four hundred fifty ($450.00) dollars per annum;

(d) For each license in incorporated cities with a population of ten thousand (10,000) or more, or within a distance of five (5) miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, six hundred ($600.00) dollars per annum;

(e) For each railway system in the state of Montana, three hundred ($300.00) dollars per annum;

(f) The distance of five (5) miles from the corporate limits of any incorporated cities and incorporated towns shall be measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city or town; and where the premises of the applicant to be licensed are situated within five (5) miles of the corporate boundaries of two (2) or more incorporated cities or incorporated towns of different populations the license chargeable by the larger incorporated city or incorporated town shall apply and be paid by the applicant; provided, however, that when the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of said incor-

porated town or incorporated city be without said five (5) mile limit then the license fee chargeable by the smaller incorporated town or incorporated city shall apply and be paid by said applicant.

The license fees herein provided for are exclusive of and in addition to other license fees chargeable in the state of Montana for the sale of liquor, beer and malt beverages.

The census taken under the direction of Congress of the United States in the year nineteen hundrd and thirty, and every ten years thereafter, shall be the basis upon which the respective populations of said municipalities shall be determined, unless a direct enumeration of the inhabitants thereof be made by the state or municipal corporation, in which case such later direct enumeration shall constitute such basis, provided, however, that no census hereafter taken shall be such basis until it shall have been published under the authority under which the same shall be taken, and then its effect shall from the date of such publication be prospective only and provided, further, that none of the provisions of this act shall be deemed to operate retroactively.

History: En. Sec. 4, Ch. 84, L. 1937; amd. Sec. 1, Ch. 221, L. 1939; amd. Sec. 1, Ch. 163, L. 1941; amd. Sec. 1, Ch. 211, L. 1943; amd. Sec. 1, Ch. 236, L. 1947.

Annual License Fee

The license fee required to be paid by a liquor dealer in communities and unincorporated towns, located within a distance of five miles from the city of Butte, Mont., separate and apart from the city and not in the city nor in a place not a town although within five miles of the city, is $200; and the license fee required of persons engaged in such business in communities not within the city limits but lying adjacent thereto though not towns, having no names, the streets thereof being extensions of city streets, and having social and cultural life that of the city, is $600 annually. Pollard v. Montana Liquor Control Board, 114 M 44, 47, 131 P 2d 974, explained in 115 M 347, 348, 143 P 2d 891.

Five-Mile Rule Not Applicable within Boundaries Where Fee Definitely Fixed

The five-mile rule does not apply to an applicant who is situated within the boundary of a city or town, the license fee for which is definitely fixed by statute; where a taxing or licensing statute is open to two constructions, the doubt should be resolved in favor of the taxpayer. Thus the license fee for an applicant to sell liquor at retail in East Helena, Montana, with a population of less than 2000, although his premises are within five miles of the city of Helena with a population of more than 10,000, is $200 instead of $600. Vantura v. Montana Liquor Control Board, 113 M 265, 269, 124 P 2d 569.

Payment under Protest with Action to Recover Back, as against Mandamus to Compel Issuance of License Refused for Insufficient Tender

Semble: It would seem that section 84-4501 affords the remedy for an applicant for a liquor license which is denied by the state liquor board on the ground of tender of insufficient fee; applicant may pay the required fee under protest and then bring an action to recover it back, rather than to bring an action in mandamus to compel the board to issue the license for the fee tendered, the procedure followed in the instant case, wherein the time involved threatened to extend beyond the period for which the license was desired. State ex rel. Putnam v. District Court, 109 M 223, 225, 95 P 2d 441.

"Town"

The word "town" in its broad sense, is an aggregation of houses so near to one another that the inhabitants thereof may fairly be said to dwell together; it must constitute a distinct place and have a name. A "town," as used in this section has application to unicorporated as well as incorporated ones. Pollard v. Montana Liquor Control Board, 114 M 44, 46, 131 P 2d 974, explained in 115 M 347, 348, 143 P 2d 891.

In a proceeding in mandamus to compel the state liquor control board to refund to relator, a retail liquor dealer doing business at a place called "McCracken," situated within a distance of five miles of the city of Billings, the difference between $600 paid by him as a license fee and $200 properly chargeable in a "town" located as is McCracken, held, under the facts presented, that McCracken is not a town, as claimed by relator under the decision in Pollard v. Montana Liquor Con-

trol Board, 114 M 44, 131 P 2d 974, although mail so addressed reaches its destination, and it appears on the official map of the railroad commission. State ex rel. McCracken v. State Liquor Control Board, 115 M 347, 351, 143 P 2d 891.

Unnamed Persons Interested in Premises

License issued in name of one person who failed to state in application, that two others, who were ineligible for license, had an interest in the premises was invalid and subject to immediate cancellation and revocation. Perry v. Luding, 123 M 570, 217 P 2d 207, 217.

Collateral References

Intoxicating Liquors⇐91.

48 C.J.S. Intoxicating Liquors §§ 183, 184.

30 Am. Jur. 333, Intoxicating Liquors, §§ 150-157.

4-405. Half year license fee for sale of beer or liquor to June 30, 1944. Effective January 1, 1944, the Montana liquor control board shall collect from applicants a payment of only half the annual fee required by the laws of the state of Montana for the retail sale of beer and/or liquor; such license shall expire at midnight of June 30, 1944.

History: En. Sec. 1, Ch. 235, L. 1943.

4-406. Fee for and expiration of licenses after July 1, 1944. Effective July 1, 1944, and at the same date of each year thereafter, the Montana liquor control board shall issue licenses for the retail sale of beer and/or liquor on an annual basis, and at such fees as are prescribed by law, and such licenses shall expire at midnight of June 30th of the succeeding year. Provided that when the applicant shall have had a beer license or beer and liquor licenses for 1943, he shall pay the fees required for such license or licenses for the first half of 1944 before he shall be qualified to be issued such license or licenses for the year commencing June 30, 1944.

History: En. Sec. 2, Ch. 235, L. 1943.

4-407. Application for license—penalty for false statements. Prior to the issuance of a license as herein provided, the applicant shall file with the Montana liquor control board an application in writing, signed by the applicant, and containing such information and statements relative to the applicant and the premises where the liquor is to be sold, as may be required by the Montana liquor board.

The application shall be verified by the affidavit of the person making the same before a person authorized to administer oaths. If any false statement is made in any part of said application, the applicant, or applicants, shall be deemed guilty of a misdemeanor and upon conviction thereof the license, if issued, shall be revoked and the applicant, or applicants, subjected to the penalties provided by law.

History: En. Sec. 5, Ch. 84, L. 1937; amd. Sec. 2, Ch. 221, L. 1939; amd. Sec. 2, Ch. 163, L. 1941.

Opposition by Inhabitants of Locality or Neighborhood Not Grounds for Refusal of License

Application for writ of supervisory control to annul judgment that liquor board issue license to applicant was refused because of opposition by inhabitants of the particular locality or neighborhood for the reason that certain class of foreigners employed on surrounding farms became a menace to the peace and quiet of the neighborhood when under the influence of liquor. Such a ground was not provided for by the law as a basis for refusal. If applicant met the legal requirements and the rules and regulations of the board, he was entitled to a license. McFatridge v. District Court, 113 M 81, 87, 122 P 2d 834.

Power of Cities and Towns

Holder of retail liquor license issued by state liquor control board was entitled to engage in retail liquor business without interference by city authorities subject only to payment of fee which city might exact, not exceeding 50 per cent of fee

paid to state. State ex rel. Wiley v. District Court, Sixteenth Judicial District, 118 M 50, 164 P 2d 358, 361.

Under the maxim expressio unius est exclusio alterius the legislature has made manifest its intent to inhibit all powers of cities and towns over the matter of intoxicating liquors, except as to those powers specifically enumerated. Stephens v. City of Great Falls, 119 M 368, 175 P 2d 408, 411.

The state liquor control board has complete control of the liquor traffic within the state and cities and towns are without power to interfere with such control. State ex rel. McCarten v. Corwin, 119 M 520, 177 P 2d 189, 196.

References

State ex rel. Burns v. City of Livingston, 144 M 248, 395 P 2d 971, 979.

Collateral References

Intoxicating Liquors⇨64.
48 C.J.S. Intoxicating Liquors § 145.

4-407.1. Notice of application—publication—protest. When an application has been filed with the Montana liquor control board for a license to sell liquor at retail, or to transfer such license, the board shall promptly publish in a newspaper of general circulation in the city, town or county from whence such application shall come, a notice that such applicant has made application for such license, and that protests against the issuance of a license to the applicant will be heard at a time stated in the notice, which shall be at a special or regular meeting of the Montana liquor control board in the city of Helena, Montana. Notice of application for a new license shall be published once a week for four (4) consecutive weeks. Notice of application for transfer of a license shall be published once a week for two (2) consecutive weeks. Notice may be substantially in the following form:

NOTICE OF APPLICATION FOR RETAIL LIQUOR LICENSE

Notice is hereby given that on the ..... day of ....., 19....., one (name of applicant) filed an application for a retail liquor license with the Montana liquor control board, to be used at (describe location of premises where license is to be sold), and protests, if any there be, against the issuance of such license will be heard at the hour of —M, on the ..... day of ....., 19...., at the office of the Montana liquor control board in Helena, Montana.

Dated ..... Signed .....
ADMINISTRATOR

No license shall be issued until on or after the date set in the notice for hearing protests. Nor shall a license under this act be issued if the said Montana liquor control board shall find from the evidence at said hearing that the welfare of the people residing in the vicinity of the place for which such license is desired will be adversely and seriously affected, or that the purposes of the Montana Retail Liquor License Act will not be carried out by the issuance of such license. Each applicant shall, at the time of filing his application, pay to the Montana liquor control board, an amount sufficient to cover the costs of publishing said notice.

History: En. Sec. 1, Ch. 202, L. 1951; amd. Sec. 1, Ch. 145, L. 1965.

Collateral References

Intoxicating Liquors⇨65.
48 C.J.S. Intoxicating Liquors § 146.

4-408. Investigation of application. Upon receipt of an application for a license under this act, accompanied by the necessary license fee and bond, the board shall within thirty (30) days thereafter, cause to be made a

thorough investigation of all matters pertaining thereto, and shall determine whether such applicant is qualified to receive a license and his premises are suitable for the carrying on of the business, and whether the requirements of this act and the rules and regulations promulgated by the board are met and complied with.

History: En. Sec. 6, Ch. 84, L. 1937.

"Premises" and "Suitable" Defined

The word "premises" as used in this and section 4-407, means the building in which the liquor business is to be carried on, and its meaning cannot be extended to include the locality or neighborhood in which the building is located; the word "suitable" has reference to the use and purpose of the premises, the thing spoken of, and its meaning cannot be enlarged to include any other purpose. McFatridge v. District Court, 113 M 81, 87, 90, 122 P 2d 834.

References

State ex rel. McCarten v. Harris, 112 M 344, 347, 115 P 2d 292; Light v. Zieter, 124 M 67, 219 P 2d 295, 300.

Collateral References

Intoxicating Liquors⇨69.

48 C.J.S. Intoxicating Liquors §§ 102, 153, 154.

4-409. License to sell liquor in railroad dining and buffet cars. (a) Any railroad or other person or corporation operating a dining, buffet, lounge, restaurant, broiler, snack or tavern car in connection with regular operated train service desiring a license to sell liquor under the provisions of this act in said dining, buffet, lounge, restaurant, broiler, snack or tavern car, shall first apply to the board for a license so to do, accompanying the application with the license fee herein prescribed. Upon being satisfied from said application, or otherwise, that the applicant is qualified, the board shall issue a license to such railroad or other person or corporation for the sale of liquor in such cars of such railroad, either by such railroad itself or by such other person or corporation operating such cars, which shall at all times be prominently displayed in the cars where liquor is served. Upon the payment of the one (1) license fee herein required to be paid, duplicates of said license shall be provided by the board, to be posted in the different cars operated within the state under the one (1) license.

(b) It is further provided that the board may, by regulation, authorize any such licensee to dispense within this state, for consumption on such cars operating in interstate commerce, liquor purchased outside this state, such authorization to be on terms and conditions to be fixed by the board ensuring payment to the board by such licensee, with respect to the liquor so purchased to be sold in this state, of the excise taxes and the state markup designated by the board which would be applicable to such liquor if purchased by the licensee from the state liquor store.

History: En. Sec. 7, Ch. 84, L. 1937; amd. Sec. 1, Ch. 179, L. 1947.

References

Light v. Zieter, 124 M 67, 219 P 2d 295, 300.

Collateral References

Intoxicating Liquors⇨51.

48 C.J.S. Intoxicating Liquors § 124.

30 Am. Jur. 312, Intoxicating Liquors, § 105.

4-409.1. Special permits to sell liquor—application and issuance—fee. Any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, not otherwise licensed under this act, shall in the discretion of the board, without notice or hearing as provided in section 4-407.1, be entitled to a special permit to sell liquor

at such post or lodge, to members and their guests only, to be consumed within the hall or building of such post or lodge.

The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal organization, shall describe the location of the hall or building where the special permit shall be used and the date it will be used. Such application shall be accompanied by a permit fee of ten dollars ($10.00).

The special permit issued shall be for a twenty-four (24) hour period ending at 2 a.m. only and the board shall not issue more than twelve (12) such permits to any such post or lodge during a calendar year. Such post or lodge must have either a retail license or special permit to sell beer before being entitled to a special permit to sell liquor.

History: En. Sec. 2, Ch. 235, L. 1963.

4-410. Contents of license—posting—privilege—transfer—expiration. Every license issued under this act shall set forth the name of the person to whom issued, the location by street and number, or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under said license, and such other information as the board shall deem necessary. If the licensee is a partnership or if more than one person has any interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises wherein the business authorized under the license is conducted and such license shall be exhibited upon request to any authorized representative of the board or to any peace officer of the state of Montana.

Any license issued under the provisions of this act shall be considered a privilege personal to the licensee named in the license and shall be good until the expiration of the license, unless sooner revoked or suspended. A license may be transferred to the executor or administrator of the estate of any deceased licensee when such estate consists in whole or in part of the business of selling liquor under a license and in such event the license may descend or be disposed of with the business to which it is applicable under appropriate probate proceedings.

In the event of a major loss or damage to licensed premises by unforeseen natural causes, or in case of expiration of lease of the licensed premises, or in the event of eviction or increase of rent by the landlord, in case of rented, licensed premises, or in case of proposed removal of license to premises as substantially suited for the retail liquor business as the premises vacated, the licensee may apply to the board for a transfer of the license to a different premises, the board may in its discretion permit a transfer in such cases if it appears to the board that such a transfer is required to do justice to the licensee applying for the transfer. The board shall in no event, nor for any cause, permit a transfer to a different premises where the sanitary, health and service facilities are less satisfactory than such facilities which exist or had existed at the premises from which the transfer is proposed to be made. Upon a bona fide sale of the business operated under any license the license may be transferred to a qualified purchaser. No transfer of any license as to person or location shall be effective unless

and until approved by the board and any licensee or transferee or proposed transferee who operates or attempts to operate under any supposedly transferred license prior to the approval of such transfer by the board, endorsed upon the license in writing, shall be considered as operating without a license and the license affected may be revoked or suspended by the board. The board shall not in any event permit the transfer of any license beyond the quota area within which such license was originally issued, any such license which is not within a quota area may not be transferred to any premises within a quota area.

Except as above provided, no license shall be transferred or sold, nor shall it be used for any place of business not described in the license, provided however, that such license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the board, must be endorsed on the license. All licenses shall expire at midnight of June thirtieth of each year.

History: En. Sec. 8, Ch. 84, L. 1937; amd. Sec. 1, Ch. 97, L. 1951.

Cross-Reference

Notice of application for transfer to be published, sec. 4-407.1.

Assignment of License

An "involuntary" assignment and coerced surrender, enforced by court decree, after making for the parties a contract to which they did not and could not agree, is not authorized. Light v. Zeiter, 124 M 67, 219 P 2d 295, 300.

Complaint in suit for reformation of contract on ground that words "stock and fixtures" in contract for sale of beer and liquor establishment, containing provision for surrender of property in case of default, were intended by the parties to include the beer and liquor licenses, showed plaintiffs had no right in the original licenses which were transferred to purchasers where the several plaintiffs were alleged to have been joint owners, but the original liquor and beer licenses were in the name of only one of them. Light v. Zeiter, 124 M 67, 219 P 2d 295, 303.

Where plaintiffs rented premises and allowed defendant to use their liquor license under a home-made lease, liquor license was not transferred to defendant at the expiration of the lease since plaintiffs had renewed the license themselves, and it was inconceivable that they would have sold license worth $10,000 to another for rent amounting to $3,000 over a five-year period. Beard v. McCormick, 147 M 361, 411 P 2d 964.

Attachment of License

A retail liquor license is subject to attachment. Stallinger v. Goss, 121 M 437, 193 P 2d 810.

Disqualification of Partner

The disqualification of a single partner works a disqualification of all the partners. Light v. Zeiter, 124 M 67, 219 P 2d 295, 302.

Disqualified Person Interested in Premises

License issued in name of one person who failed to state in application that two others, who were ineligible for license, had an interest in the premises, was invalid and subject to cancellation. Perry v. Luding, 123 M 570, 217 P 2d 207, 217.

License Transferred with Lease

Where a court decree adjudged that the liquor licenses be transferred to the defendants, but because they were unable under Montana law to hold such licenses, an arrangement was made between the plaintiff and the defendant to transfer the licenses to the plaintiff along with a lease of the premises; such lease and transfer will be upheld where there is consideration. Sears v. Barker, 126 M 101, 244 P 2d 516.

Sheriff's Sale

A retail liquor dealer's license could be purchased by a qualified person at a sheriff's sale and such purchaser could insist that the license so purchased be transferred to him. Stallinger v. Goss, 121 M 437, 193 P 2d 810.

Transfer of Location

Purchaser of a license from a licensee cannot compel liquor control board to consent to transfer of license where he intends to carry on business at a location different from that authorized in the original license. State ex rel. Jester v. Paige, 123 M 301, 213 P 2d 441.

Montana liquor control board conformed to legislative directive in refusing to authorize removal of license from premises for which it was granted to another location three doors away on the same side of

street. State ex rel. Boulds v. Paige, 124 M 353, 224 P 2d 141.

References

State ex rel. McCarten v. Harris, 112 M 344, 347, 115 P 2d 292; Brubaker v. D'Orazi, 120 M 22, 179 P 2d 538, 543.

Collateral References

Intoxicating Liquors⇐78 (1).
48 C.J.S. Intoxicating Liquors § 104.

Transfer of retail liquor license or permit from one location to another. 98 ALR 2d 1123.

4-411. Limit one license to person—beer license, when required. No person shall be granted more than one license in any year. No person, club, or fraternal organization shall be entitled to a license under this act unless such person, club, or fraternal organization shall have a beer license issued under the laws of Montana.

History: En. Sec. 9, Ch. 84, L. 1937.

References

State ex rel. McIntire v. City of Libby, 107 M 216, 218, 82 P 2d 587; Perry v Luding, 123 M 570, 217 P 2d 207, 214.

Collateral References

Intoxicating Liquors⇐46½, 58.
48 C.J.S. Intoxicating Liquors §§ 130, 134 et seq.

4-412. Persons disqualified for license. No license shall be issued by the board to:

1. A person who has been convicted of being the keeper or is keeping a house of ill fame.

2. A person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality, under the laws of the federal government or any state of the United States.

3. A person whose license issued under this act has been revoked for cause.

4. A person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application.

5. A person who is not qualified or whose premises do not conform to the provisions of this act, or with the rules and regulations promulgated by the board.

6. A person who is not a citizen of the United States and who has not been a resident of the state of Montana for at least one (1) year immediately preceding the filing of the application for license.

7. A person who is not the owner and operator of the business.

History: En. Sec. 10, Ch. 84, L. 1937; amd. Sec. 1, Ch. 76, L. 1945; amd. Sec. 1, Ch. 244, L. 1947; amd. Sec. 1, Ch. 10, L. 1957.

Disqualified Person Interested in Premises

License issued in name of one person who failed to state in application, that two others, who were ineligible for license, had an interest in the premises, was invalid and subject to immediate cancellation and revocation. Perry v. Luding, 123 M 570, 217 P 2d 207, 217.

Objection of Inhabitants Not Reason for Refusal

In the absence of statutory disqualification or noncomformance with rules and regulations laid down by the board free from caprice, whim or arbitrary conduct, applicant may not be refused a license on ground that his premises is unsuitable for extraneous reasons; and the legislature not having authorized a plebiscite or local option election, informal or otherwise, opposition by the inhabitants of a town "and vicinity" does not constitute a cause for refusal of a license. State ex rel. McCarten v. Harris, 112 M 344, 350, 115 P 2d 292, explained in 118 M 50, 63, 164 P 2d 358.

References

Light v. Zeiter, 124 M 67, 219 P 2d 295, 300; State ex rel. Burns v. City of Livingston, 144 M 248, 395 P 2d 971, 979.

Collateral References

Intoxicating Liquors⇐58.
48 C.J.S. Intoxicating Liquors § 135.

4-413. Persons to whom liquor may not be sold or given. No licensee or his or her employee or employees, nor any other person, shall sell, deliver, or give away or cause or permit to be sold, delivered or given away any liquor, beer or wine to:

1. Any person under the age of twenty-one (21) years.
2. Any intoxicated person or any person actually, apparently or obviously intoxicated.
3. A habitual drunkard.
4. An interdicted person.
5. Any minor, or other person who knowingly misrepresents his or her qualifications for the purpose of obtaining liquor, beer or wine from such licensee shall be equally guilty with said licensee and shall, upon conviction thereof, be subject to the penalty provided in section 4-439 provided, however, that nothing herein contained shall be construed as authorizing or permitting the sale of liquor, beer or wine to any person in violation of any federal law.

History: En. Sec. 11, Ch. 84, L. 1937; amd. Sec. 3, Ch. 221, L. 1939; amd. Sec. 1, Ch. 71, L. 1953.

Cross-References

Bartenders, waiters and waitresses, age of employment, secs. 41-1135, 41-1136.

Intoxicating liquor not to be sold or given to minors, secs. 4-161, 94-35-106.

Construction of Section

While this section holds that a minor is "equally guilty" it does not mean that he is held as a matter of law to be an accomplice of the person charged with selling intoxicating liquor to a person under the age of twenty-one. The minor's crime would be the misdemeanor of knowingly misrepresenting his qualifications for the purpose of obtaining liquor. State v. Paskvan, 131 M 316, 309 P 2d 1019, 1020.

Entrapment

Defense of entrapment would not be available to a bar owner in a prosecution for selling liquor to a minor where it was shown that the public officers had given a minor money and sent him into the bar to purchase the liquor in order to obtain evidence. State v. Parr, 129 M 175, 283 P 2d 1086, 55 ALR 2d 1313, distinguished in 237 F 2d 169, 172. (Dissenting opinion, 129 M 183, 283 P 2d 1086, 1090.)

Jurisdiction of Prosecutions

The original jurisdiction of an offense defined in this section is in the justices' courts [since changed]. State v. Holt, 121 M 459, 194 P 2d 651, 662; State v. Morrissey, 122 M 246, 199 P 2d 964. See State v. Winter, 129 M 207, 285 P 2d 149, 156.

It is not possible to read into this act the provisions of section 4-223 which gives the district court jurisdiction of criminal actions for violation of the State Liquor Control Act. State v. Holt, 121 M 459, 194 P 2d 651, 663; State v. Morrissey, 122 M 246, 199 P 2d 964.

The very next legislature, after the case of State v. Holt, 121 M 459, 194 P 2d 651, dispelled all doubt as to its intent by promptly enacting chapter 143, Laws 1949 (94-35-106, 94-35-106.1) whereby original jurisdiction of the offense of selling of intoxicating liquor to any minor is expressly conferred upon the district courts of the state. State v. Winter, 129 M 207, 285 P 2d 149, 156.

With respect to the prosecution of a licensee for the sale of liquor to an interdicted person, the provisions of this chapter control over the provisions of the Liquor Control Act (4-201 et seq.) and a justice court had jurisdiction over such a prosecution. State ex rel. Geschwender v. La Rowe, 136 M 591, 341 P 2d 906.

Sales to Minors

This section repeals by implication that part of section 4-161 relating to sales to minors. State v. Holt, 121 M 459, 194 P 2d 651, 660; State v. Morrissey, 122 M 246, 199 P 2d 964.

Time of Taking Effect

As chapter 71, Laws 1953 failed to prescribe or fix a time whereon the act shall take effect it did not take effect until July 1, 1953 by virtue of section 43-507. Hence the provisions of that chapter have no application to an offense committed May 8, 1953 which was prior to the effective date of chapter 71. State v. Winter, 129 M 207, 285 P 2d 149, 155.

Collateral References

Intoxicating Liquors⇦79.

48 C.J.S. Intoxicating Liquors § 114.

30 Am. Jur. 423, Intoxicating Liquors, § 320 et seq.

DECISIONS UNDER FORMER LAW

Application of Section

This section applies only to licensees or their employees and to that extent is a special act which must prevail over the provisions of a general law when such provisions are in conflict. State v. Holt, 121 M 459, 194 P 2d 651, 661.

A defendant could not be prosecuted under this section and punished as for a violation of former section in conflict. State v. Holt, 121 M 459, 194 P 2d 651, 662.

4-414. Hours for sale of liquor. No liquor shall be sold, offered for sale or given away upon any premises licensed to sell liquor at retail during the following hours:

(a) Sunday, from two A. M. to one P. M.;

(b) On any other day between two A. M. and eight A. M.;

(c) On any day of a biennial general or primary election at which state and national officers are elected, during the hours when the polls are open, but not upon the day of any other election; provided, however, when any city, or incorporated or unincorporated town has any ordinance further restricting the hours of sale of liquor, such restricted hours shall be the hours during which sale of liquor at retail shall not be permitted within the jurisdiction of any such city or town.

History: En. Sec. 12, Ch. 84, L. 1937; amd. Sec. 2, Ch. 162, L. 1959.

Sufficiency of Complaint

A complaint that alleges "on or about" a certain day of a certain month is sufficient since the precise day is not of the essence of the offense and it is sufficient if the evidence discloses the unlawful sale of liquor on a day other than the date disclosed in the complaint. State ex rel. Borberg v. District Court, Thirteenth Judicial District, Yellowstone County 125 M 481, 240 P 2d 854, 856, 858, 859.

References

State v. Holt, 121 M 459, 194 P 2d 651, 660; State ex rel. City of Libby v. Haswell, 147 M 492, 414 P 2d 652.

Collateral References

Intoxicating Liquors⇐121.

48 C.J.S. Intoxicating Liquors § 206 et seq.

30 Am. Jur. 438, Intoxicating Liquors, §§ 348-353.

4-415. Restrictions on proximity of premises to churches and schools. No license shall be granted for any premises which shall be on the same street or avenue and within six hundred feet of a building occupied exclusively as a church, synagogue or other place of worship, or school, except a commercially operated school; the measurements to be taken in a straight line from the center of the nearest entrance of such school, church, synagogue or other place of worship to the center of the nearest entrance of the premises to be licensed; except, however, that no license shall be denied because such restriction may apply to any premises so located which are maintained as a bona fide hotel, restaurant, railway car, club or fraternal organization or society except similar places of business established and in actual operation for one year prior to the passage and approval of this act.

History: En. Sec. 13, Ch. 84, L. 1937.

References

State ex rel. McCarten v. Harris, 112 M 344, 347, 115 P 2d 292.

Collateral References

Intoxicating Liquors⇐59 (2).

48 C.J.S. Intoxicating Liquors § 136.

30 Am. Jur. 435, Intoxicating Liquors, §§ 343-347.

"School," "schoolhouse," or the like within statutory prohibition of liquor license for location within specified distance thereof. 49 ALR 2d 1103.

4-416. Board to sell to licensees—posted price. The board is hereby authorized to sell through its stores all kinds of liquor, wine and cordials kept in stock to licensees licensed under this act at the posted price thereof in the store in which said liquor is sold. All sales shall be upon a cash basis. The posted price as used herein shall mean the retail price of such liquor as fixed and determined by the Montana liquor control board and in addition thereto an excise tax as in this act provided.

History: En. Sec. 14, Ch. 84, L. 1937.

Collateral References

Intoxicating Liquors⊂⇒128.

48 C.J.S. Intoxicating Liquors § 211 et seq.

State power to regulate price of intoxicating liquors. 14 ALR 2d 699.

4-417. Excise liquor tax — collection. The Montana liquor control board is hereby authorized and directed to charge, receive and collect at the time of the sale and delivery of any liquor as authorized under any provision of the laws of the state of Montana an excise tax at the rate of sixteen per centum (16%) of the retail selling price on all liquor so sold and delivered. The Montana liquor control board shall retain the amount of such excise tax received in a separate account and shall deposit with the state treasurer, to the credit of the general fund, such sums so collected and received not later than the tenth (10th) day of each and every month.

History: En. Sec. 15, Ch. 84, L. 1937; amd. Sec. 1, Ch. 41, L. 1939; amd. Sec. 1, Ch. 180, L. 1957. Approved at Referendum, Nov. 4, 1958.

Items Taxed

License and excise taxes are due and collectible only upon liquor purchased by the liquor control board at the time of sale and delivery to the board, and are not due and collectible upon materials, products and distilled spirits containing alcohol for manufacturing purposes. Alpha Industries, Inc. v. Montana Liquor Control Board, 146 M 23, 403 P 2d 606.

4-418. Duplicate invoices of sales required. The state liquor store shall upon each and every sale of liquor to any licensee, issue a duplicate invoice of the liquor purchased as provided by said board, a copy of which shall be delivered to the licensee and one copy retained at such store. The invoice shall show the date of purchase, name of employee making the sale, the quantity of each kind of liquor purchased, the price paid therefor, the name of the licensee and the number of the license, with such other information as may be required by the board. The licensee shall keep and retain his duplicate invoice of all purchases made by him from the state liquor store, which shall at all times be subject to inspection by the duly authorized officers, agents and employees of the board.

History: En. Sec. 16, Ch. 84, L. 1937.

Collateral References

Intoxicating Liquors⊂⇒128.

48 C.J.S. Intoxicating Liquors § 211 et seq.

4-419. Sale of liquor not purchased from state store forbidden—penalty. It shall be unlawful for any licensee to sell or keep for sale and/or have on his premises for any purpose whatever, any liquor except that purchased from the state liquor store, and any licensee found in possession of, or selling and keeping for sale, any liquor which was not purchased from a

state liquor store, shall, upon conviction, be fined not less than five hundred dollars ($500.00) nor more than fifteen hundred dollars ($1500.00), or by imprisonment for not less than three (3) months nor more than one (1) year, or both such fine and imprisonment, and if the board shall be satisfied that any such liquor was knowingly sold or kept for sale within the licensed premises by such licensee, or by his agents, servants or employees, it shall be mandatory that said board immediately revoke the license of said licensee.

History: En. Sec. 17, Ch. 84, L. 1937.

References

State v. Holt, 121 M 459, 194 P 2d 651, 660.

Collateral References

Intoxicating Liquors⇐106 (4), 139, 140.
48 C.J.S. Intoxicating Liquors §§ 175, 222, 223.

4-420. Penalty for sale of alcoholic liquor without license. Any person, who has not been issued a license under this act, who shall sell or keep for sale any alcoholic liquor, shall be guilty of a felony and upon conviction thereof shall be fined not less than one thousand dollars ($1000.00) nor more than five thousand dollars ($5,000.00), or be imprisoned in the state prison for not less than one (1) nor more than five (5) years, or both such fine and imprisonment.

History: En. Sec. 18, Ch. 84, L. 1937.

Title Defect Cured

Since chapter 84 of the 1937 Session Laws was incorporated without reference to the original title in the Revised Codes of Montana 1947, as this section, and the Revised Codes of Montana 1947 were approved, legalized and adopted by the legislature by the provisions of chapter 4 of the Laws of 1951 which now appear as section 12-330, any defect or omission in the title of the 1937 law was thereby cured. State v. Garcia, 132 M 600, 319 P 2d 962, 963.

References

State v. Holt, 121 M 459, 194 P 2d 651, 660; Perry v. Luding, 123 M 570, 217 P 2d 207, 215; Light v. Zeiter, 124 M 67, 219 P 2d 295, 301.

Collateral References

Intoxicating Liquors⇐150.
48 C.J.S. Joint Stock Companies § 250.

4-421. Sale of liquor at less than posted price forbidden. It shall be unlawful for any licensee under the provisions of this act to resell any liquor purchased by such licensee from a state liquor store for a sum less than the posted price established by the said store and paid by the licensee therefor.

History: En. Sec. 19, Ch. 84, L. 1937.

References

State v. Holt, 121 M 459, 194 P 2d 651, 660.

Collateral References

Intoxicating Liquors⇐146 (1).
48 C.J.S. Intoxicating Liquors §§ 237, 238, 241-244, 246, 276.

State power to regulate price of intoxicating liquors. 14 ALR 2d 699.

4-422. Employees of board not to deal in liquor. No member or employee of the board, including those engaged in the sale of liquor at the various state liquor stores, shall be directly or indirectly engaged in dealing in liquor whether as owner, part owner, member of a syndicate, shareholder or otherwise, whether for his own benefit or in a fiduciary capacity for others.

History: En. Sec. 20, Ch. 84, L. 1937.

Collateral References

Intoxicating Liquors⇐118.
48 C.J.S. Intoxicating Liquors § 198.

4-423. Officers may seize illicit liquor—forfeiture. Any sheriff, police officer, or inspector appointed under this act, who shall find any alcoholic beverages, liquor or moonshine which is kept or held by any person for sale or other disposition in violation of this act, may forthwith seize and remove the same, and keep the same as evidence, and upon conviction of a person for violation of the provisions hereof, the said liquor and all packages containing the same shall be forfeited to the state of Montana, and in addition the person so violating the law shall be subject to the penalties herein prescribed.

History: En. Sec. 21, Ch. 84, L. 1937.

48 C.J.S. Intoxicating Liquors §§ 386, 388, 391.

Collateral References

Intoxicating Liquors⊂247.

4-424. Board to make rules and regulations—forms—records. For the purpose of the administration of this act the board shall make, promulgate and publish such rules and regulations as the said board may deem necessary for carrying out the provisions of this act and for the orderly and efficient administration hereof, and except as may be limited or prohibited by law and the provisions of this act, such rules and regulations so made and promulgated shall have the force of statute. Every licensee shall advise himself of such rules and regulations, and ignorance thereof shall be no defense. Without limiting the generality of the foregoing provision, the said board shall be empowered and it is made its duty to prescribe forms to be used in the administration of this act, the proof to be furnished and the conditions to be observed in the issuance of licenses, prescribing forms or records to be kept of the sale of liquor by stores, prescribing notices required by this act or the regulations thereof, and the manner of giving and serving the same, prescribing, subject to the provisions of this act, the conditions and qualifications necessary to obtain a license, the books and records to be kept by the licensee, the form of returns to be made by them, and providing for the inspection of such licensed premises, specifying and describing the place and manner in which the liquor may be lawfully kept or stored, covering the conduct, management and equipment of premises licensed to sell liquor and make regulations respecting the sale and consumption of liquor in clubs, hotels and other places of business of licensees.

History: En. Sec. 22, Ch. 84, L. 1937.

M 344, 347, 115 P 2d 292; Perry v. Luding, 123 M 570, 217 P 2d 207, 214.

References

State ex rel. McCarten v. Harris, 112

4-425. Denial of application for license or renewal—suspension or revocation—actions. The board may (1) upon its own motion and shall (2) upon the written, verified complaint of any other person, investigate the action and operation of any retailer licensed under the Montana Retail Liquor License Act. If the board, after investigation, shall have reasonable cause to believe that any such licensee has violated any of the provisions of this act, or any rules, or regulations of the board, it may, in its discretion, and in addition to the other penalties herein prescribed, proceed to revoke the license of any such licensee, or it may suspend the same for a period of not to exceed three (3) months, or it may refuse to grant a renewal of

said license upon the expiration thereof, under the procedures herein provided. If the board shall, in its sound discretion, determine to invoke such procedures for the purpose of refusing to grant an application for renewal of any license previously issued or for revoking or suspending any such license, it shall give to the licensee fifteen (15) days notice of its intended action, addressed and forwarded by registered mail to the licensee at the address given in the existing license, stating generally the basis and reasons for its intended action and the proposed action. Within said fifteen (15) day period said licensee may, in case of intention to refuse to grant a renewal of a license, institute proceedings in the nature of a writ of review, or, in case of intention to revoke or suspend a license, institute proceedings in injunction, and in any event in the district court of the county wherein the premises of the licensee are located for the purpose of having the intended action of the board judicially reviewed and inquired into for (a) abuse of discretion on the part of the board, (b) failure of the board to observe, or its departure from, or disregard of the applicable law governing the board in the particular circumstances, or (c) for arbitrary or tyrannical action by the board. The board shall in all cases certify to the court its complete record in the matter and the issues shall be heard of the merits by the court upon such record and upon such further legal evidence as the parties may present. If the court in any such proceedings determines that such licensee has, in fact, violated any provisions of this act or any regulations of the board, the court shall dismiss such proceedings, and the board shall proceed to such administrative determination as to it seems proper in the circumstances. Pending determination of such matter on the merits the court may, based upon a showing of undue hardship to a licensee and upon the posting of a proper bond in an amount, and conditioned upon such terms as the court may prescribe in the presence of the surrounding circumstances, stay the effective date of the intended action of the board for such times as to the court may seem proper. If no stay order is issued by the court or any stay order once issued has expired, the board shall issue its order of suspension or of revocation of license or its order denying the renewal of license. If the court shall, on the other hand, determine that good cause did not exist for the intended action of the board, or that the board abused its discretion, or otherwise acted unlawfully with respect to its intended action, on any of the grounds herein stated, the court shall issue its order and decree accordingly and the board shall comply therewith. Either party to the proceedings in the district court may appeal from its decision to the supreme court of the state of Montana, by following the procedures applicable to such appeals in civil actions.

History: En. Sec. 23, Ch. 84, L. 1937; amd. Sec. 1, Ch. 67, L. 1955.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

Disqualified Person Interested in Premises

License issued in name of one person who failed to state in application, that two others, who were ineligible for license, had an interest in the premises was invalid and subject to immediate cancellation and revocation. Perry v. Luding, 123 M 570, 217 P 2d 207, 217.

License Issued under Mandate

Where, after stay of execution was denied, the liquor control board did not apply for supersedeas from the supreme court but issued a license in compliance with a district court mandate, the question whether the mandate was proper did not present a justiciable controversy for

the supreme court, even under section 93-8024. Gill v. Rafn, 133 M 505, 326 P 2d 974, distinguished in 136 M 453, 456, 348 P 2d 797, 799, 78 ALR 2d 1012.

Collateral References

Intoxicating Liquors⇐106 (1).

48 C.J.S. Intoxicating Liquors §§ 174, 175.

4-426, 4-427. Repealed—Chapter 67, Laws of 1955.

Repeal

These sections (Secs. 24, 25, Ch. 84, L. 1937), relating to the procedure upon the filing of charges against a licensee and a hearing on such charges, were repealed by Sec. 2, Ch. 67, Laws 1955.

4-428. Officers may examine premises. The board or any duly authorized representative thereof, or the sheriff of any county, shall have the right at any time to make an examination of the premises of such licensee as to whether the law of Montana and the rules and regulations of the said board are being complied with, and shall also have a right to inspect cars of any railway system licensed under this act.

History: En. Sec. 26, Ch. 84, L. 1937.

References

Perry v. Luding, 123 M 570, 217 P 2d 207, 215.

Collateral References

Intoxicating Liquors⇐106 (1).

48 C.J.S. Intoxicating Liquors §§ 174, 175.

4-429. Renewal of suspended licenses. After suspension or revocation of a license the board shall have the power to renew the same if in its discretion a proper showing therefor has been made.

History: En. Sec. 27, Ch. 84, L. 1937.

4-430. City and county licenses—fees. The city council of any incorporated town or city, or the county commissioners outside of any incorporated town or city, may provide for the issuance of licenses to persons to whom a license has been issued under the provisions of this act, and may fix license fees thereof, not to exceed a sum equal to fifty per cent (50%) of the license fee collected by the board from such licensee under this act.

History: En. Sec. 28, Ch. 84, L. 1937.

References

State ex rel. Wiley v. District Court, Sixteenth Judicial District, 118 M 50, 164 P 2d 358, 360; State ex rel. City of Libby v. Haswell, 147 M 492, 414 P 2d 652.

Collateral References

Intoxicating Liquors ⇐10 (4).

48 C.J.S. Intoxicating Liquors § 51.

4-431. Act when effective—protests—elections. The provisions of this act as to the issuance of licenses as herein provided shall be effective thirty (30) days after the passage and approval of this act. In the event that during the said period of thirty (30) days, a duly verified petition in writing signed by not less than thirty-five per centum (35%) of the registered qualified electors of any county file with the board of county commissioners their protest against the issuance of any licenses as herein provided by the Montana liquor control board under the provisions of this act, then the said Montana liquor control board shall not issue any license or licenses within said county, except as herein provided.

The board of county commissioners must within five (5) days after the filing of said petition, meet and determine the sufficiency of the petition presented by ascertaining whether or not at least thirty-five per centum

(35%) of the signers of said petition are registered electors of the territory or county affected. The board of county commissioners must within ten (10) days after the filing of such petition, if such petition be sufficient therefor make an order calling an election to be held within the county in the manner and at the places of holding an election for county offices in such county. Such election to be held on a day fixed by the board of county commissioners not more than thirty (30) days after the filing of such petition for the purpose of determining whether or not any license for the sale of spirituous liquors may be sold within the limits of the county as provided by the provisions of this act.

History: En. Sec. 30, Ch. 84, L. 1937.

Collateral References

Intoxicating Liquors⇐29 et seq., 102; Statutes⇐255.

48 C.J.S. Intoxicating Liquors §§ 71 et seq., 116.

30 Am. Jur. 341, Intoxicating Liquors, § 167 et seq.

4-432. Publication notice of election. The notice of election must be published once a week for four (4) weeks in such newspapers in the county where the election is to be held as the board of county commissioners may think proper.

History: En. Sec. 31, Ch. 84, L. 1937.

Collateral References

Intoxicating Liquors⇐33 (3).
48 C.J.S. Intoxicating Liquors §§ 82, 83.

4-433. Form of ballots. The county clerk must furnish the ballots to be used at such election, as provided in the general election law, which ballots must contain the following words: "Sale of Alcoholic Beverages, Yes," "Sale of Alcoholic Beverages, No," and the elector in order to vote must mark an "X" opposite one of the answers.

History: En. Sec. 32, Ch. 84, L. 1937.

Collateral References

Intoxicating Liquors⇐34 (5).
48 C.J.S. Intoxicating Liquors § 86.

4-434. Polling places—conduct of elections. The polling places must be established, the judges and other officers to conduct the election must be designated, and the election must be held, canvassed and returned in all respects in conformity to the laws of the state.

History: En. Sec. 33, Ch. 84, L. 1937.

Collateral References

Intoxicating Liquors⇐34 (1).
48 C.J.S. Intoxicating Liquors § 86.

4-435. Effect of election—penalty—liquor store sales not affected. If a majority of the votes cast are "Sale of Alcoholic Beverages, Yes," the provisions of this act shall take effect immediately. If a majority of the votes cast are "Sale of Alcoholic Beverages, No," the board of county commissioners must publish the result once a week for four (4) successive weeks in the paper in which the notice of election was given, and at the expiration of the time of the publication of such notice all existing licenses shall be canceled and it shall thereupon be unlawful to sell, either directly or indirectly, any liquor in such county under penalty of a fine of not more than five hundred dollars ($500.00) or by imprisonment in the county jail for a period not exceeding six (6) months, or by both such fine and imprisonment;

provided, however, that nothing herein contained shall be construed to prevent or prohibit the sale of liquor at or by a state liquor store under the Liquor Control Act.

History: En. Sec. 34, Ch. 84, L. 1937.

48 C.J.S. Intoxicating Liquors §§ 64, 65, 70, 89, 94.

Collateral References

Intoxicating Liquors⇐36 (4), 40 (3).

4-436. Contest of election. Any election held under the provisions of the act may be contested in the same manner as provided by the general election laws.

History: En. Sec. 35, Ch. 84, L. 1937.

Collateral References

Intoxicating Liquors⇐37.
48 C.J.S. Intoxicating Liquors § 87.

4-437. Restriction on holding second election. If no petition protesting against the issuance of licenses as herein provided be filed with the board of county commissioners within thirty (30) days after the passage and approval of this act, or if a majority of the votes cast at any election held in pursuance of the filing of said petition as herein provided, are "Sale of Alcoholic Beverages, No," then there shall not be submitted to the qualified electors of said county any other or further question as to the sale of alcoholic beverages within said county for a period of two (2) years from and after the date of the filing of said petition protesting the issuance of said license as herein provided with the board of county commissioners.

History: En. Sec. 36, Ch. 84, L. 1937.

Collateral References

Intoxicating Liquors⇐31 (1).
48 C.J.S. Intoxicating Liquors § 73.

4-438. Business in name of licensee—federal permits required. No business shall be carried on under any license issued under this act except in the name of the licensee. No license shall be effective until a permit shall have been first secured under the laws of the United States if such a permit is necessary or is required under such law.

History: En. Sec. 37, Ch. 84, L. 1937.

Collateral References

Intoxicating Liquors⇐63, 110.
48 C.J.S. Intoxicating Liquors §§ 142, 144.

References

Perry v. Luding, 123 M 570, 217 P 2d 207, 215.

4-439. Penalty for violating act—revocation of license. Any person violating any of the provisions of this act, shall upon conviction thereof, be deemed guilty of a misdemeanor and punishable by such fine or imprisonment, or both, as provided by law, except as is herein otherwise provided. If any such licensee is convicted of any offense under this act his license shall be immediately revoked, or in the discretion of the board suspended temporarily for a time to be determined by the board. Further, if any person under the age of twenty-one (21) is convicted of an offense under this act he shall be subject to a one hundred dollar ($100.00) fine or thirty (30) days in confinement. It shall be further mandatory under the provisions of this act, that all such licensees display in a prominent place in his premises a placard as issued by the board stating fully the consequences

for violations by persons under the age of twenty-one (21) years of the provisions of this act.

Any person who invites a person under the age of twenty-one (21) years into a public place where liquor is sold and treats, gives or purchases liquor for such person, or permits such person in a public place where liquor is sold to treat, give or purchase liquor for him, or holds out such person to be over the age of twenty-one (21) years to the owner of the liquor establishment, or his or her employee or employees, shall be guilty of a misdemeanor.

History: En. Sec. 38, Ch. 84, L. 1937; amd. Sec. 2, Ch. 226, L. 1947; amd. Sec. 1, Ch. 161, L. 1951.

References

State ex rel. Jester v. Paige, 123 M 301, 213 P 2d 441; Perry v. Luding, 123 M 570, 217 P 2d 207, 215; State ex rel. Borberg v. District Court, Thirteenth Judicial District, Yellowstone County, 125 M 481, 240 P 2d 854, 856, 858; State v. Paskvan, 131 M 316, 309 P 2d 1019, 1020; State ex rel. Geschwender v. La Rowe, 136 M 591, 341 P 2d 906.

Collateral References

Intoxicating Liquors⇐106 (4), 131.

48 C.J.S. Intoxicating Liquors §§ 175, 214, 236, 268, 280.

Right to hearing before revocation or suspension of liquor license. 35 ALR 2d 1067.

4-440. Saving clause—scope of act. If any clause, sentence, paragraph, section or any part of this act shall be declared and adjudged to be invalid and/or unconstitutional, such invalidity or unconstitutionality shall not affect, impair, invalidate or nullify the remainder of this act. This act shall apply to the Montana liquor control board as now composed and existing, and to any board or commission which may hereafter succeed the above said board.

History: En. Sec. 39, Ch. 84, L. 1937.

Collateral References

Statutes⇐64 (9).

82 C.J.S. Statutes § 110.

4-441. Limitation on effect of repeal. All acts and parts of acts in conflict hereto are hereby repealed, but this act shall not be construed to repeal or amend any provision or section of the State Liquor Control Act of Montana, except in so far as the same is in conflict with this act.

History: En. Sec. 40, Ch. 84, L. 1937.

Construction of Section

This section does not make section 4-223 a part of this act. State v. Holt, 121 M 459, 194 P 2d 651, 663.

CHAPTER 5

IDENTIFICATION CARDS

Section 4-501. Definitions.
4-502. Identification card—form.
4-503. File to be kept—inspection.
4-504. License of licensee not to be revoked or suspended for selling to minor when identification card properly completed, signed and filed.
4-505. Montana liquor control board—power to adopt rules and regulations.
4-506. All persons attaining the age of twenty-one (21) years may apply to the county clerk and recorder for an identification card.
4-507. Duties of the county clerk and recorder.
4-508. County clerk and recorder to forward application to the Montana liquor control board for issuance of identification card.

4-509. Montana liquor control board to furnish application forms to county clerk and recorders.
4-510. Fee to be charged.
4-511. Repealed.
4-512. Misrepresenting age or falsely procuring or altering identification card.
4-513. Penalty for violations.
4-514. Jurisdiction.

4-501. Definitions. As used in this act the term

(a) "Licensee" means any person, firm or corporation licensed by the state of Montana to sell liquor and/or beer and includes the agents, servants and employees of any such person, firm or corporation;

(b) "Vendor" means the vendor of any state of Montana liquor store and includes all liquor store employees under the immediate supervision of such vendor;

(c) "Beer" means beer as defined, regulated and controlled by the Montana Beer Act (Title 4, chapter 3, sections 4-301 through 4-356, inclusive, Revised Codes of Montana, 1947, as amended or supplemented);

(d) "Liquor" means liquor as defined, regulated and controlled by the Montana Retail Liquor License Act (Title 4, chapter 4, sections 4-401 through 4-441, inclusive, Revised Codes of Montana, 1947, as amended or supplemented) and the State Liquor Control Act of Montana (Title 4, chapters 1 and 2, sections 4-101 through 4-239, inclusive, Revised Codes of Montana, as amended or supplemented).

History: En. Sec. 1, Ch. 107, L. 1955; amd. Sec. 15, Ch. 154, L. 1965.

Compiler's Notes

Sections 4-316, 4-331, 4-334 to 4-336, and 4-343, contained in the references in subd. (c) to sections 4-301 through 4-356, were repealed by Sec. 12, Ch. 166, Laws 1951. Section 4-340 was repealed by Sec. 2, Ch. 55, Laws 1955.

Sections 4-426 and 4-427, contained in the reference in subd. (d) to sections 4-401 through 4-441, were repealed by Sec. 2, Ch. 67, Laws 1955.

Sections 4-123 to 4-132, 4-157, 4-162, 4-165, 4-166 and 4-168, contained in the reference in subd. (d) to sections 4-101 through 4-239, were repealed by Sec. 17, Ch. 154, Laws 1965. Section 4-155 was repealed by Sec. 1, Ch. 53, Laws 1949. Section 4-231 was repealed by Sec. 242, Ch. 147, Laws 1963.

4-502. Identification card—form. Any person who desires to procure any beer and/or liquor from any vendor or licensee may, for the purpose of aiding such vendor or licensee to determine whether or not such person is at least twenty-one (21) years of age, be required to complete and sign an identification card, which shall be in substantially the following form:

ALCOHOLIC BEVERAGES IDENTIFICATION CARD

This card if properly completed and signed may be accepted by the vendor or licensee named below for the purpose of establishing the legal age of the person designated who desires to purchase alcoholic beverages.

Complete Two or More of the Following:

Social Security Card No. .....; Issued at ..... Date .....
Birth Certificate issued at .....; Date of birth .....
Draft Card issued at .....; Date of birth .....
Discharge Papers: Service .....; Issued at .....;
Date of birth .....

Military Identification Card or Pass: Service .....;
Issued at ..... Date ..... Age Shown .....
Driver's License: Date .....; Issued at .....;
Age Shown .....
I hereby represent to ..... that I am over the age of twenty-one (21) years, having been born on the ..... day of ....., 19...., at ....., and this statement is made for the purpose of establishing my age in order to obtain service of alcoholic beverages with the full knowledge that I am subject to fine and/or imprisonment for any misrepresentation made herein. I have submitted the documents and papers checked on this card, and the person to whom submitted has compared the signatures thereon and has also compared the descriptions on said documents with my physical characteristics.
(Witness) ..... (Signature) .....
(Address) ..... (Address) .....

The Montana liquor control board shall cause to be printed and distributed upon request to vendors and licensees blank forms of the identification card herein prescribed.

History: En. Sec. 2, Ch. 107, L. 1955; amd. Sec. 16, Ch. 154, L. 1965.

Collateral References
Intoxicating Liquors⇨119.
48 C.J.S. Intoxicating Liquors § 200.

4-503. File to be kept—inspection. The identification card prescribed by this act shall be filed alphabetically by the vendor or licensee at or before the close of business on the day when such card is executed, in a file box containing a suitable alphabetical index. Such cards shall be subject to examination upon request by any peace officer, or by any member or authorized representative of the Montana liquor control board.

History: En. Sec. 3, Ch. 107, L. 1955.

4-504. License of licensee not to be revoked or suspended for selling to minor when identification card properly completed, signed and filed. The license of any licensee in possession of an identification card properly completed, signed and filed as provided in this act shall not be suspended or revoked for selling beer and/or liquor to a person under the age of twenty-one (21) years who has presented such identification card at the time of purchase and delivered the same for filing as herein provided.

History: En. Sec. 4, Ch. 107, L. 1955.

4-505. Montana liquor control board—power to adopt rules and regulations. The Montana liquor control board shall have the power to adopt such rules and regulations as it shall deem necessary or advisable to effectuate the purposes of this act.

History: En. Sec. 5, Ch. 107, L. 1955.

4-506. All persons attaining the age of twenty-one (21) years may apply to the county clerk and recorder for an identification card. All persons attaining the age of twenty-one (21) years may apply to the county clerk and recorder of the county in which the applicant resides for an identifi-

cation card which shall prima facie establish that the applicant has reached the age of twenty-one (21) years.

History: En. Sec. 1, Ch. 190, L. 1957.

4-507. Duties of the county clerk and recorder. Upon making application to the county clerk and recorder for an identification card, the applicant must apply in person before the county clerk and recorder, who shall ascertain and receive from the applicant:

1. The true and full name of the applicant;

2. The date of birth of the applicant, provided, however, it shall be within the discretion of the officer to require proof of the date of birth with a certified copy of his or her birth certificate;

3. Place of birth of the applicant;

4. The height and weight of the applicant;

5. The color of eyes and hair of the applicant; and

6. A one and one-quarter inch (1¼") by one and one-half inch (1½") photograph of the applicant which shall bear a true resemblance to the applicant. It shall be within the discretion of the clerk and recorder to refuse a photograph which does not present a true resemblance of the applicant.

History: En. Sec. 2, Ch. 190, L. 1957.

4-508. County clerk and recorder to forward application to the Montana liquor control board for issuance of identification card. The county clerk and recorder shall forward the application, properly filled in and authenticated, to the Montana liquor control board, and that board shall prepare an identification card upon a laminating machine. The identification card shall set forth all the information contained in the application, together with the photograph, and shall be signed by the chairman of the Montana liquor control board or his designee.

History: En. Sec. 3, Ch. 190, L. 1957.

4-509. Montana liquor control board to furnish application forms to county clerk and recorders. It shall be the duty of the Montana liquor control board to prepare suitable application blanks and cause the same to be distributed to the various county clerk and recorders.

History: En. Sec. 4, Ch. 190, L. 1957.

4-510. Fee to be charged. The county clerk and recorders shall charge and collect a fee of fifty cents ($0.50) from the applicant at the time the application is prepared. This fee shall be transmitted to the Montana liquor control board along with the application and shall be used to defray the cost of administering and executing the provisions of this act. Any surplus shall revert to the general fund of the state of Montana.

History: En. Sec. 5, Ch. 190, L. 1957.

4-511. Repealed—Chapter 154, Laws of 1965.

Repeal

This section (Sec. 6, Ch. 190, L. 1957), prohibiting the issuance of liquor permits to persons under 21 years of age, was repealed by Sec. 17, Ch. 154, Laws 1965.

4-512. Misrepresenting age or falsely procuring or altering identification card. It shall be unlawful for any person to fraudulently misrepresent his or her age to any dispenser of intoxicating liquor, or to falsely procure an identification card, or to alter any of the statements contained in the identification card as herein provided for.

History: En. Sec. 7, Ch. 190, L. 1957.

4-513. Penalty for violations. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor which upon conviction, shall be punishable by a fine of five hundred dollars ($500.00) or three (3) months' confinement, or both.

History: En. Sec. 8, Ch. 190, L. 1957.

4-514. Jurisdiction. The district courts of this state shall have concurrent jurisdiction with justice of the peace courts in all prosecutions under this act.

History: En. Sec. 9, Ch. 190, L. 1957.

TITLE 5

BANKS AND BANKING

Chapter 1. The Bank Act—definition of terms, 5-101 to 5-109.
2. Organization and incorporation of banks, 5-201 to 5-217.
3. Dissolution and disincorporation of banks, 5-301.
4. Stockholders' liability, 5-401 to 5-403.
5. Miscellaneous regulatory provisions, 5-501 to 5-533.
6. State banking department—state examiner ex officio superintendent of banks, 5-601 to 5-606.
7. Bank reports and supervision, 5-701 to 5-707.
8. Impairment of capital—insolvency, 5-801 to 5-803.
9. Examination and supervision—state examiner's fund, 5-901 to 5-910.
10. General powers and limitations of banks, 5-1001 to 5-1057.
11. Closing and liquidation of banks, 5-1101 to 5-1132.
12. Federal deposit insurance corporation aid available to banking institutions, 5-1201 to 5-1206.
13. Morris plan companies, 5-1301 to 5-1311.
14. Uniform Common Trust Act, 5-1401 to 5-1406.

CHAPTER 1

THE BANK ACT—DEFINITION OF TERMS

Section 5-101. Citation of act—application of provisions—who subject to penalties.
5-102. Institutions to which act is applicable.
5-103. Number of persons necessary to form corporation.
5-104. Commercial bank defined.
5-105. Savings bank defined.
5-106. Trust company defined—purposes for which may be formed.
5-107. Investment company defined—purposes for which may be formed.
5-108. Unincorporated and private bank defined.
5-109. Definition of words and terms.

5-101. (6014.1) **Citation of act—application of provisions—who subject to penalties.** This act shall be known as the "Bank Act" and shall be applicable to all corporations and persons specified in the next section, and to such other corporations as shall subject themselves to special provisions and sections thereof, and to such other persons, copartnerships, or corporations who shall by violating any of its provisions become subject to the penalties provided therein.

History: En. Sec. 1, Ch. 89, L. 1927.

Cross-References

Building and loan associations, secs. 7-101 to 7-159.

Credit unions, secs. 14-130 to 14-158.

Exemption of state banks from corporation license tax, sec. 84-1501.4.

Taxation of banks and shares, secs. 84-4601 to 84-4605.

References

Conley v. Johnson, 101 M 376, 388, 54 P 2d 585.

Collateral References

Banks and Banking⇨4.

9 C.J.S. Banks and Banking § 6.

10 Am. Jur. 2d 33, Banks, § 8.

5-102. (6014.2) **Institutions to which act is applicable.** The word "Bank" as used in this act, shall be construed to mean any corporation which shall have been incorporated to conduct the business of receiving money on deposit, or transacting a trust or investment business as hereinafter defined. The soliciting, receiving, or accepting of money or its equiva-

lent on deposit as a regular business, shall be deemed to be doing a commercial or savings bank business, whether such deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, or other receipt; provided, that nothing herein shall apply to or include money or its equivalent left in escrow, or left with an agent pending investment in real estate or securities for or on account of his principal. It shall be unlawful for any corporation, partnership, firm, or individual to engage in or transact a banking business within this state, except by means of a corporation duly organized for such purpose. Banks are divided into the following classes:

(a) Commercial Banks,
(b) Savings Banks,
(c) Trust Companies,
(d) Investment Companies,

provided, further, however, that this act shall not apply to any person, firm or association now doing a private banking business; provided, however, that said private banks hereinabove referred to shall come under all of the provisions of this act which may be fairly applicable thereto; provided further, however, that this act shall not apply to any investment company or corporation, heretofore established under authority of the law of Montana, not accepting, receiving, and holding money on deposit.

History: En. Sec. 2, Ch. 89, L. 1927.

Effect of Incorporation

A corporation which pursuant to sections 5-202 and 5-203 applied to the Montana superintendent of banks for an authorization under date of November 29, 1955, became a bank no later than April 30, 1956, the date on which the application was granted by the superintendent although it did not commence a banking business until November 1, 1960. First Nat. Bank in Billings v. First Bank Stock Corp., 306 F 2d 937, 940.

References

First Nat. Bank in Billings v. First Bank Stock Corp., 197 F Supp 417, 423.

Collateral References

Banks and Banking⇨2, 4.
9 C.J.S. Banks and Banking §§ 1, 6.
10 Am. Jur. 2d 25, Banks, §§ 1-4.

5-103. (6014.3) **Number of persons necessary to form corporation.** Corporations may be formed by any number of natural persons not less than three under the laws of this state to conduct, as provided in this act and not otherwise, any one, or more, or all of the businesses mentioned in the preceding section.

History: En. Sec. 3, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇨23.
9 C.J.S. Banks and Banking § 42.

5-104. (6014.4) **Commercial bank defined.** The term "Commercial Bank," when used in this act, means any bank authorized by law to receive deposits of money, deal in commercial paper, or to make loans thereon, and to lend money on real or personal property, and to discount bills, notes, or other commercial papers, and to buy and sell securities, gold and silver bullion, or foreign coins, or bills of exchange.

History: En. Subd. a, Sec. 4, Ch. 89, L. 1927.

References

First Nat. Bank in Billings v. First Bank Stock Corp., 306 F 2d 937, 940.

Collateral References

Banks and Banking⇨22.
9 C.J.S. Banks and Banking § 41.

5-105. (6014.5) **Savings bank defined.** The term "Savings Bank," when used in this act, means a bank organized only for the purpose of accumulating and loaning the funds of its members, stockholders, and depositors, and which may loan and invest the funds thereof, receive deposits of money, loan, invest, and collect the same, with interest, and repay depositors with or without interest; with power to invest said funds and moneys in such property, securities, and obligations as may be prescribed by this act; and to declare and pay dividends on its general deposits, and a stipulated rate of interest on deposits made for a stated period, or upon special terms.

History: En. Subd. b, Sec. 4, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐289.

9 C.J.S. Banks and Banking §§ 956, 957.

5-106. (6014.6) **Trust company defined—purposes for which may be formed.** The term "Trust Company," when used in this act, means any corporation which is incorporated under the laws of this state for any one or more of the following purposes:

1. To receive moneys in trust, and to accumulate the same at such rates of interest as may be obtained or agreed upon, or to allow such interest thereon as may be agreed upon.

2. To accept and execute all such trusts and perform such duties of every description as may be committed to them by any person or persons whatsoever, or by any corporations, or may be committed or transferred to them by order of any of the courts of record of this state, or any other state, or of the United States.

3. To take and accept by grant, assignment, transfer, devise, or bequest, and hold any real or personal estate or trust created in accordance with the laws of this state, or any other state, or of the United States, and execute such legal trusts in regard to the same on such terms as may be declared, established, or agreed upon in regard thereto.

4. To act as agent for the investment of money for other persons or corporations, and as agents for persons and corporations for the purpose of issuing, registering, transferring, or countersigning the certificates of stock, bonds, or other evidence of debt of any corporation, association, municipality, state, or public authority as may be agreed upon.

5. To accept from and execute trusts for married women in respect to their separate property, whether real or personal, and act as agents for them in the management of such property, and generally to have and exercise such powers as are usually had and exercised by trust companies.

6. To act as trustee, assignee, or receiver in all cases where it shall be lawful for any court of record, officer, corporation, or person to appoint a trustee, assignee, or receiver, and to be appointed a trustee, assignee, or receiver, and to be appointed, commissioned, and act as administrator of any estate, executor of any last will and testament of any deceased person, and as guardian of the person and estate of any minor or minors, or of the estate of any lunatic, imbecile, spendthrift, habitual drunkard, or other persons disqualified or unable to manage their estates.

7. To loan money upon unencumbered real estate, collateral, or personal security, and execute and issue its notes, debentures, payable at a

future date, and to pledge its mortgages upon real estate and other securities as security therefor.

8. To buy and sell government, state, county, municipal, and other bonds, and all kinds of negotiable, nonnegotiable, and commercial paper, stocks, and other investment securities, buy and sell gold and silver bullion, foreign coins, bills of exchange, and foreign and domestic exchange.

9. To accept, receive, and hold money on deposit, payable either on time or on demand, with or without interest, as may be agreed upon with the depositors, and to take and receive from any individual or corporation on deposit for safekeeping and storage, gold and silver plate, jewelry, stocks, and securities, and other valuable and personal property, and to collect coupons, interest, and dividends on said above described securities, and to rent out the use of safes and other receptacles on their premises upon such terms and for such compensation as may be agreed upon.

History: En. Subd. c, Sec. 4, Ch. 89, L. 1927.

Interest Rate by Trust Agreement Not Creative of Debtor and Creditor Relationship—Preference on Insolvency of Bank

A state bank exercising the powers of a trust company, has specific authority to receive moneys in trust and may allow an agreed rate of interest thereon, as against the contention that by a deposit of money in trust with a provision in the trust agreement that interest at a certain rate should be paid thereon to the trustee, the relation of debtor and creditor was created and therefore on the insolvency of the bank a claim for preference payment did not lie. Trust fund entitled to preference. Conley v. Johnson, 101 M 376, 388, 54 P 2d 585.

Collateral References

Banks and Banking⊂310.
9 C.J.S. Banks and Banking § 1045.

5-107. (6014.7) **Investment company defined—purposes for which may be formed.** The term "Investment Company," when used in this act, means any corporation which is incorporated under the laws of this state for any one or more of the following purposes:

1. To receive moneys in trust, and to accumulate the same at such rates of interest as may be obtained or agreed upon, or to allow such interest as may be agreed upon, and to issue and sell its contracts or certificates of indebtedness directly or through an agent or broker, bearing fixed rates of interest, in whole or in part, with participation or nonparticipation in the profits of the corporation, and maturing at fixed periods of time, or otherwise, as may be fully set forth in said contracts or certificates.

2. To buy and sell government, state, county, municipal, and other bonds, and all kinds of negotiable and non-negotiable and commercial paper, stocks, and other investment securities.

3. To accept, receive, and hold money on deposit, payable either on time or on demand, with or without interest, as may be agreed upon with depositors, and to collect coupons, interest, and dividends on said above described securities.

History: En. Subd. d, Sec. 4, Ch. 89, L. 1927.

5-108. (6014.8) **Unincorporated and private bank defined.** The term "Unincorporated Bank" shall comprehend "Private Bank," and shall include every unincorporated person, firm or association transacting banking

business in this state, and the term "Board of Directors" shall include the owner or owners of such banks.

History: En. Subd. e, Sec. 4, Ch. 89, L. 1927.

Collateral References
Banks and Banking⇐22.
9 C.J.S. Banks and Banking § 41.

5-109. (6014.9) **Definition of words and terms.** (a) The terms capital, capital stock or paid-in capital mean that fund for which certificates of stock are issued to stockholders in case of incorporated banks and that fund set aside and dedicated for capital purposes in case of private banks.

(b) The term "surplus" means a fund paid in or created pursuant to the provisions of this act by a bank from its net earnings or undivided profits, which when set apart and designated as such, is not available for the payment of dividends and cannot be used for the payment of expenses or losses so long as such bank has undivided profits.

(c) The term "undivided profits" means the credit balance of the profit and loss account of any bank.

(d) The term "profit and loss account" or "profit and loss" means that account carried on the books of the bank into which all earnings accounts and recoveries are closed, thus exhibiting "gross earnings" and against which all loss and other disbursement items are charged revealing "net earnings" which are then properly closed to "undivided profits accounts" or "undivided profits," out of which dividends are paid and reserves set aside.

(e) The term "net earnings" means the excess of the gross earnings of any bank over expenses and losses chargeable against such earnings during any one year.

(f) The term "time deposits" means all deposits, the payment of which cannot legally be required within thirty (30) days.

(g) The term "demand deposits" means all deposits, the payment of which can legally be required when demanded.

(h) The words "consolidate" and "merge" shall be deemed to mean the same thing and may be so used interchangeably in this act without loss of power.

(i) The word "superintendent" wherever it appears in this act shall be deemed to mean "superintendent of banks" or "state superintendent of banks" of the state of Montana.

History: En. Sec. 5, Ch. 89, L. 1927.

Collateral References
Banks and Banking⇐35, 87.
9 C.J.S. Banks and Banking §§ 57, 157.

CHAPTER 2

ORGANIZATION AND INCORPORATION OF BANKS

Section 5-201. Organization and incorporation—articles of agreement.
5-202. Presentation of articles to superintendent of banks—secretary of state to issue certificate—when body corporate.
5-203. Superintendent of banks to approve or refuse application—filing articles with secretary of state.
5-204. Banks, etc., may have continual succession—when.
5-205. Rejection of application by superintendent of banks conclusive.

5-206. Amount of capital.
5-207. Calling of first meeting.
5-208. Board of directors—qualifications, tenure, and vacancies.
5-209. Director must own not less than one thousand dollars in stock.
5-210. Selection of officers and employees—meetings and minutes.
5-211. Bylaws.
5-212. Increase or diminution of capital stock—authorized.
5-213. Change of corporate name authorized.
5-214. Change of place of business and number of directors authorized.
5-215. Procedure for carrying into effect the three foregoing sections.
5-216. Certificate of proceedings—contents and effect.
5-217. Change in number of directors—procedure—approval by superintendent of banks.

5-201. (6014.10) **Organization and incorporation—articles of agreement.** Any three or more persons, desiring to associate themselves together for the purpose of becoming a corporation to engage in any one or more or all of the businesses mentioned in this act, shall sign and acknowledge, in the manner provided for the acknowledgment of deeds of real estate, articles of agreement, which shall set forth:

1. The corporate name of the proposed corporation which shall not be the name of any other corporation theretofore granted and then doing business of a similar character in this state, or any imitation of such name. Provided that it shall be lawful to use the name theretofore used by any corporation previously incorporated and doing business in the state of Montana, but which has been disincorporated, liquidated, dissolved and entirely out of business.

2. The name of the city or town and county in which the principal office of the corporation is to be located.

3. The amount of the capital stock of the corporation; the number of shares into which it is to be divided, and the par value of such shares; the amount of capital stock actually subscribed in good faith at the time of the signing of such articles of agreement; and the amount of the capital stock actually paid up in lawful money of the United States, and in the custody of some banking institution designated as the depository thereof until the proposed corporation is fully organized and authorized to engage in business.

4. The names and places of residence of the several shareholders, and the number of shares subscribed by each.

5. The number of the board of directors, and the names of those agreed upon for the first year and the articles may provide that the number of directors elected at each annual meeting, within the limits specified in this act, shall constitute the board for the year, all vacancies to be filled by the board taking the action, and also may provide that a majority of the full board of trustees may increase the number of the directors of the bank, not exceeding two (2), within the limits specified in this act, and appoint persons to fill the resulting vacancies between meetings of the stockholders.

6. The purpose for which the association or company is formed, which may be set forth by the use of the general terms herein defined, with reference to each line of business in which the proposed corporation desires to engage.

History: En. Sec. 6, Ch. 89, L. 1927; amd. Sec. 1, Ch. 7, L. 1965.

Collateral References

Banks and Banking ⇨22-34, 292, 312.

9 C.J.S. Banks and Banking §§ 41-56, 959, 1046.

10 Am. Jur. 2d 46, Banks, § 20 et seq.

Powers of bank president or vice-president. 1 ALR 693 and 67 ALR 970.

State banks, insurance companies, or building and loan associations, which are members of federal reserve banks or similar federal agencies or national banks, as within state social security or unemployment compensation act. 145 ALR 1074, and 165 ALR 1250.

5-202. Presentation of articles to superintendent of banks—secretary of state to issue certificate—when body corporate. Thereupon the articles of agreement shall be presented to the superintendent of banks, together with an application in writing in the form prescribed by the superintendent of banks for a certificate authorizing the proposed corporation to transact within this state the business specified therein. Upon the presentation of the articles of agreement, together with such application, the superintendent of banks shall examine or cause an examination to be made in order to ascertain whether the requisite capital of such bank has been subscribed and been paid up in cash. He shall also determine whether the corporation is being formed for any other than the legitimate business contemplated by this act, or whether the public convenience and advantage will be promoted by the opening of such bank, and whether the corporate name assumed by such bank, by reason of the use by it of any one or more of the words "commercial," "trust," "savings," or "investment," in conjunction with any other word or words, resembles so closely as to be likely to cause confusion, the name of any other bank previously formed under this act. He shall also ascertain from the best sources of information at his command whether the character and general fitness of the persons named as stockholders are such as to command confidence of the community in which such bank is proposed to be located. The expenses of the superintendent of banks in making the examination required by this act shall be paid by the proposed bank, and payment shall be made in advance if required by the superintendent of banks.

History: Enacted as part of Sec. 6, Ch. 89, L. 1927.

Creation of Bank

When the superintendent of banks issued a certificate of authority for the establishment of a bank, the capital having been previously paid in, the organization became a state bank within the meaning of the Bank Holding Company Act of 1956 (U. S. C., tit. 12, secs. 1841 to 1848), even though it did not actually commence business until some time later. First Nat. Bank in Billings v. First Bank Stock Corp., 197 F Supp 417, 423, affirmed in 306 F 2d 937.

Effect of Incorporation

A corporation which applied to the Montana superintendent of banks for an authorization under date of November 29, 1955, became a bank, as defined in section 5-102, no later than April 30, 1956, the date on which the application was granted by the superintendent although it did not commence a banking business until November 1, 1960. First Nat. Bank in Billings v. First Bank Stock Corp., 306 F 2d 937, 940.

5-203. Superintendent of banks to approve or refuse application—filing articles with secretary of state. If the superintendent of banks shall not be satisfied with the result of his investigation, he shall refuse the application within sixty (60) days after the articles of agreement and the application have been presented to him, and so notify the incorporators named therein. If the superintendent of banks shall be satisfied with the result of

his investigation, he shall, within sixty (60) days after such application has been made to him, issue under his hand and official seal the certificate of authorization, required by this act, in duplicate. The articles of agreement, together with one of such certificates of authorization, so issued, by the superintendent of banks, shall be filed in the office of the clerk and recorder of the county in which is located the principal place of business of the proposed bank, and a certified copy of the articles of agreement, together with the other certificate of authorization issued by the superintendent of banks, shall be filed with the secretary of state. Upon filing with the secretary of state, the articles of agreement, and the certificate of authorization, and paying the fee required for the filing of articles of incorporation, the secretary of state shall issue a certificate setting forth that such corporation has been duly organized, the amount of its authorized and subscribed capital, and the business in which it is to engage; and such certificate shall be taken by all courts of this state as evidence of the corporate existence of such bank. The person so signing and acknowledging the articles of agreement, and their associates and successors, shall thereupon become and be a body corporate with power of continual succession, and by such name they and their successors shall be entitled to have, possess, and enjoy all the rights and privileges conferred by this act.

History: Enacted as part of Sec. 6, Ch. 89, L. 1927.

Approval of Application

A corporation which applies to the Montana superintendent of banks for an authorization becomes a bank when the application is granted by the superintendent. First Nat. Bank in Billings v. First Bank Stock Corp., 306 F 2d 937, 940.

5-204. Banks, etc., may have continual succession—when. Any bank, trust company or investment company now existing, may at any time, within the period limited for its duration, elect to avail itself of the right of continual succession herein given, by filing its intention so to do in the office of the county clerk and recorder of the county wherein such corporation is located and a copy thereof with the secretary of state, by paying the legal filing fees therefor. No such corporation shall be allowed to increase its capital stock by such filing without complying with the provisions of this act and paying the legal filing fees as in such cases otherwise provided.

History: Enacted as part of Sec. 6, Ch. 89, L. 1927.

5-205. (6014.11) **Rejection of application by superintendent of banks conclusive.** In the event the application for a certificate of authorization shall be refused by the superintendent of banks, such action shall be final and conclusive.

History: En. Sec. 7, Ch. 89, L. 1927.

5-206. (6014.12) **Amount of capital.** The amount of the common and preferred stock of a commercial bank shall not be less than twenty-five thousand dollars ($25,000) and in addition thereto there shall be created a surplus of not less than ten per cent (10%) of the amount of the capital stock of said bank, which said surplus and capital stock shall be paid up in cash and deposited with some bank or banks at the time the application is made to the superintendent of banks for the certificate of authorization hereinabove mentioned.

That a commercial bank having its place of business in a city or town of more than two thousand (2,000) and less than four thousand (4,000) inhabitants, as disclosed by the last authorized census, shall have a capital stock of not less than thirty thousand dollars ($30,000), and a surplus of ten per cent (10%) of the capital stock as hereinbefore provided; that a commercial bank having its place of business in a city or town of more than four thousand (4,000) inhabitants, as disclosed by the last authorized census, shall have a capital stock of not less than fifty thousand dollars ($50,000) and a surplus of ten per cent (10%) of the capital stock as hereinbefore provided.

The amount of the capital stock of a savings bank, trust company, or investment company shall be fixed and limited by the articles of agreement, and shall be not less than one hundred thousand dollars ($100,000) nor more than ten million dollars ($10,000,000), of which amount at least one hundred thousand dollars ($100,000) must be subscribed and fully paid up in cash and on deposit with some bank or banks in this state when the application is made to the superintendent of banks for the certificate of authorization hereinabove mentioned. The remainder of the authorized capital stock may be subscribed and paid in at such times and under such regulations as the board of directors of such corporation may determine. The shares of the common capital stock of all banks shall have a par value of one hundred dollars ($100) or such less amount as may be provided in the articles of incorporation; provided that this act shall not require any bank in existence and doing business to increase its capital stock.

History: En. Sec. 8, Ch. 89, L. 1927; amd. Sec. 1, Ch. 81, L. 1935; amd. Sec. 1, Ch. 45, L. 1963.

References

First Nat. Bank in Billings v. First Bank Stock Corp., 306 F 2d 937, 939.

Collateral References

Banks and Banking⇐36, 292, 312.

9 C.J.S. Banks and Banking §§ 58, 959, 1046.

10 Am. Jur. 2d 55, Banks, § 30.

5-207. (6014.13) **Calling of first meeting.** When the formation of the corporation is completed under the provisions of this act by the issuance of the certificate of incorporation by the secretary of state, any three such incorporators signing the articles of agreement, may call the first meeting of the corporation at such time and place as they may appoint by giving notice thereof by publication in some newspaper of general circulation in the county in which the principal office for the transaction of business is to be located, at least five (5) days before the time appointed for such meeting. If all the subscribers to the capital stock unite in a call for such meeting, in writing, no notice is necessary. If the first meeting be not called within thirty (30) days from the date of the certificate of incorporation, or if such corporation shall fail to commence the business for which it is incorporated within ninety (90) days from the date of the issuance of the certificate of authorization, the superintendent of banks is authorized to cancel such certificate of authorization.

History: En. Sec. 9, Ch. 89, L. 1927.

Commencement of Business

A corporation did not cease to be a bank because it did not commence business within one year from the date of its incorporation as required by section 15-808 (since repealed) where the superintendent of banks did not cancel his certificate of authorization, as authorized by this sec-

tion, but continued to recognize the corporation as a bank. First Nat. Bank in Billings v. First Bank Stock Corp., 306 F 2d 937, 941.

Failure To Commence Business

The provisions of section 15-808 (since repealed) for automatic cessation of corporate powers if a corporation does not commence business within one year from the date of its incorporation are in direct conflict with this section, so do not apply to banks. First Nat. Bank in Billings v. First Bank Stock Corp., 197 F Supp 417, 424, affirmed in 306 F 2d 937.

Collateral References

Banks and Banking⇐43, 293, 313.

9 C.J.S. Banks and Banking §§ 60, 67-69, 72, 965, 966, 1048.

5-208. (6014.14) **Board of directors—qualifications, tenure, and vacancies.** The affairs of the bank shall be managed by a board of directors, not less than three (3) or more than eleven (11) in number, all of whom shall be stockholders of such bank and citizens of the United States, and of whom at least two-thirds (2/3) must be residents of the state of Montana. No person who shall have been convicted of a crime against the banking laws of the United States or of any state of the union shall be elected a director. The directors shall be elected for a term of one (1) year at the annual meeting of the stockholders, which shall be held on the second Tuesday in January of each year. In case the election shall not be made on the day fixed for the annual meeting, the corporation shall not thereby be dissolved, but an election may be had at any other time agreeable to the bylaws of the corporation, and the persons so elected shall hold their office until the second Tuesday in January following, or until others are elected and qualified. In case of death or resignation of one or more of said directors, the vacancy shall be filled by the board, and the directors so appointed shall hold office until the next annual election, at which time a director shall be elected to fill out the unexpired term. Every director shall take and subscribe an oath that he will diligently and honestly perform his duty in such office, and will not knowingly violate or permit a violation of any of the provisions of this act; that he is the owner in good faith of the required number of shares of stock in the bank standing in his name on the books of the bank. Such oaths shall be made in duplicate, one copy of which shall be transmitted to the superintendent of banks and filed in his office, and one copy shall be kept on file in the office of the bank.

History: En. Sec. 10, Ch. 89, L. 1927; amd. Sec. 1, Ch. 78, L. 1957.

Collateral References

Banks and Banking⇐51.

9 C.J.S. Banks and Banking § 110 et seq.

10 Am. Jur. 2d 87, Banks, § 77 et seq.

5-209. (6014.15) **Director must own not less than one thousand dollars in stock.** No person shall be eligible for election as director of a bank unless he is a stockholder of the bank, owning in his own right shares thereof of the par value of at least one thousand dollars ($1,000.00), and every person elected to be a director, who, after such election shall cease to be the owner in his own right of the amount of such stock aforesaid, or shall hypothecate or in any way pledge such stock as security for any loan or debt, shall immediately notify the superintendent of banks of such sale or hypothecation, and such director may be removed from the office of director by the superintendent of banks, unless such disability be removed

by the acquisition of other shares of stock or release of such pledge within the time prescribed by the superintendent of banks.

History: En. Sec. 11, Ch. 89, L. 1927.

5-210. (6014.16) **Selection of officers and employees—meetings and minutes.** The board of directors shall have power to elect a president, one or more vice-presidents, cashier, and one or more assistant cashiers, and such other officers and employees as they may from time to time deem to be to the best interest of the bank, and fix their compensation. The president and at least one vice-president shall be chosen from the board of directors. The board of directors shall also elect a secretary, who shall keep a correct report of the meetings of the board and of the stockholders in a book kept for that purpose, which minutes shall particularly disclose the date of the meetings and the names of the directors or stockholders present. This record of the meetings of the board of directors shall be subscribed to by the presiding officer and secretary. Such minutes shall be read and approved at the next succeeding meeting of the board of directors, and the minutes of such next succeeding meeting shall show such fact. Such minute-book shall be kept in the office of the bank at all times, and shall be presented to the examiner at the time of his examination of the books, and it shall be the duty of such examiner to include in his report of examination of such bank a statement of the dates on which such meetings were held since the last examination of such bank by the examiner, and the names of the directors in attendance at each of said meetings. The board of directors of a bank must hold a meeting at least once a month. Any person who shall make a false entry in said book, or who shall change or alter any entry made therein, shall be deemed guilty of a misdemeanor.

History: En. Sec. 12, Ch. 89, L. 1927. 9 C.J.S. Banks and Banking §§ 969-977, 1051, 1053.

Collateral References

Banks and Banking⇐50-62, 294, 314.

5-211. (6014.17) **Bylaws.** The persons signing the articles of agreement shall, at their first meeting, adopt bylaws for the government of the corporation, which bylaws may provide for:

1. The time, place, and manner of calling and conducting the meetings of the corporation;
2. The number of stockholders constituting a quorum;
3. The mode of voting by proxy;
4. The time of the annual election of directors, and the mode and manner of giving notice thereof;
5. The duties of officers;
6. The manner of election and the tenure of office of all officers other than the directors;
7. Suitable penalties for violation of bylaws, not exceeding in any case one hundred dollars ($100.00) for any one offense.

The bylaws adopted must be certified to by a majority of the directors and the secretary of the corporation, and recorded in the book of bylaws, which said book shall be open to the inspection of the public during the office hours of each day, except holidays. A copy of the bylaws shall also be transmitted to the superintendent of banks. The bylaws may be re-

pealed or amended, or new bylaws be adopted, at the annual meetings, or at any other meeting of the stockholders called for that purpose by the directors, by a vote representing two-thirds (2/3) of the subscribed stock, or the power to repeal and amend the bylaws and adopt new bylaws may, by a similar vote at the first meeting or any annual meeting, be delegated to the board of directors.

History: En. Sec. 13, Ch. 89, L. 1927.

9 C.J.S. Banks and Banking §§ 56, 959, 1046.

Collateral References

Banks and Banking⇐34, 292, 312.

5-212. (6014.18) **Increase or diminution of capital stock—authorized.** Any bank now organized and existing, and which may hereafter be organized, may increase or diminish its capital stock by complying with the provisions of this act, to any amount which may be deemed sufficient and proper for its purposes within the limits prescribed by this act.

History: En. Sec. 14, Ch. 89, L. 1927.

Collateral References

10 Am. Jur. 2d 58, Banks, §§ 36-40.

5-213. (6014.19) **Change of corporate name authorized.** The corporate name of any bank now organized and existing, or which may hereafter be organized, may be altered, changed, or amended as in this act provided.

History: En. Sec. 15, Ch. 89, L. 1927.

5-214. (6014.20) **Change of place of business and number of directors authorized.** Every bank now organized and existing, or which may hereafter be organized, may, upon approval of the superintendent of banks, change its principal place of business from one place to another, in the same county, or in an adjacent county, within this state, and may increase or diminish the number of trustees or directors in the manner hereinafter provided.

History: En. Sec. 16, Ch. 89, L. 1927.

5-215. (6014.21) **Procedure for carrying into effect the three foregoing sections.** Whenever any bank shall decide to call a meeting of the stockholders for the purpose of increasing or diminishing the amount of its capital stock, or for changing its corporate name, or for changing its principal place of business, it shall be the duties of the trustees or directors to publish a notice signed by at least a majority of them in a newspaper in the county, if any shall be published therein, six successive weeks, and to deposit a written or printed copy thereof in the post office, addressed to each stockholder at his usual place of residence at least six weeks previous to the day of meeting, specifying the object of meeting, the time and place when and where such meeting shall be held, and the amount to which it shall be proposed to increase or diminish the capital, or the name to which it is proposed that the bank shall be changed, or to the new location or place to which the principal place of business shall be changed, and a vote of at least two-thirds (2/3) of all the shares of stock shall be necessary for an increase or diminution of the amount of its capital stock, or to change its corporate name, or to change its principal place of business.

History: En. Sec. 17, Ch. 89, L. 1927.

9 C.J.S. Banks and Banking §§ 60, 67-69, 72, 965, 966, 1048.

Collateral References

Banks and Banking⇨43, 293, 313.

5-216. (6014.22) **Certificate of proceedings—contents and effect.** If, at the time and place specified in the notice provided for in the last preceding section, stockholders shall appear in person or by proxy representing not less than two-thirds (2/3) of all the shares of stock of the corporation, and shall organize by choosing one of the trustees or directors chairman of the meeting, and also a suitable person for secretary and proceed to a vote of those present in person or by proxy, and if, on counting the votes, it shall appear that two-thirds (2/3) of the number of votes representing all the capital stock have been cast in favor of increasing or diminishing the amount of capital stock, or of changing its corporate name, or of changing its principal place of business, a certificate of the proceedings showing a compliance with the provisions of this act, the amount of capital stock actually paid in, the whole amount of debts and liabilities of the corporation, the amount to which the capital stock shall be increased or diminished, or the change in the corporate name of the corporation, or the change in the principal place of business, shall be made out, signed, and verified by the affidavit of the chairman, and be countersigned by the secretary, and such certificate shall be acknowledged by the chairman. Said certificate shall then be sent to the superintendent of banks, who shall within thirty (30) days of the receipt thereof, either approve or reject the application for change. The action of the superintendent of banks on said application shall be final. If he approves the same he shall notify the bank whereupon the certificate shall be filed in the office of the county clerk and recorder of the county wherein the bank is located and in the office of the secretary of state. Upon such filing the change shall be effective.

History: En. Sec. 18, Ch. 89, L. 1927.

5-217. (6014.23) **Change in number of directors—procedure—approval by superintendent of banks.** Any state bank or trust company may increase or diminish the number of its directors or may provide that the number of directors elected at each annual meeting, within the limits specified in this act, shall constitute the board for the year, all vacancies to be filled by the board taking the action, and also may provide that a majority of the full board of directors may increase the number of the directors of the bank, not exceeding two (2) within the limits specified in this act, and appoint persons to fill the resulting vacancies between meetings of the stockholders by amending its articles of incorporation at any regular annual meeting or at any special meeting called and noticed for that purpose, of the stockholders of the bank or trust company, provided that the number of directors shall not at any time be less than three or more than eleven.

Whenever any bank or trust company shall decide to call a special meeting of the stockholders for the purpose of amending its articles of incorporation relative to the number of directors, written or printed notice of such meeting must be deposited in the post office addressed to each stockholder of record entitled to vote at such meeting under the

articles of incorporation or amendments thereto, and the laws and constitution of Montana, at his last known place of residence at least ten days previous to the date set for the holding of such meeting, and in addition, said notice must be published once a week for two consecutive weeks in a newspaper published in the county wherein the principal place of business of such corporation is situated. If no newspaper is published in the county it shall not be necessary to publish said notice; provided, however, that the matter of amending the articles of incorporation to change the number of directors may be submitted to and acted upon at any annual meeting of the stockholders without special notice thereof.

If at the time and place specified in the notice of such special meeting or at the annual meeting of the stockholders, stockholders representing two-thirds of all the shares of stock of the corporation shall appear in person or by proxy and vote in favor of such amendment, a certificate of the proceedings showing a compliance of the provisions of this act and the amendment relative to the number of directors shall be prepared, certified and sworn to and filed with the superintendent of banks, who shall within thirty days after the receipt thereof either approve or reject the amendment. The action of the superintendent of banks on said amendment shall be final. If he approves the same, he shall notify the bank, whereupon the certificate with the superintendent's approval attached thereto shall be filed in the office of the county clerk and recorder of the county wherein the bank is situated, and a certified copy thereof shall be filed in the office of the secretary of state. Upon the filing of such certified copy with the secretary of state, the amendment shall become effective.

History: En. Sec. 19, Ch. 89, L. 1927; amd. Sec. 1, Ch. 145, L. 1931; amd. Sec. 1, Ch. 131, L. 1937; amd. Sec. 2, Ch. 7, L. 1965.

Collateral References

Banks and Banking⇨51, 294, 314.

9 C.J.S. Banks and Banking §§ 110-115, 969-977, 1051, 1053.

CHAPTER 3

DISSOLUTION AND DISINCORPORATION OF BANKS

Section 5-301. Dissolution and disincorporation.

5-301. (6014.24) **Dissolution and disincorporation.** Commercial banks, savings banks, trust companies and investment companies now organized and existing, or which may be hereafter organized, may be dissolved in the manner provided by the laws of Montana applicable to the dissolution of other corporations, except it shall be legal for any bank, upon a vote of two-thirds (2/3) of its stockholders at a special meeting called for that purpose in accordance with the bylaws of the bank, to voluntarily quit business and liquidate upon the payment of its debts, exclusive of liability to stockholders, or upon agreement with all of its creditors to a plan of liquidation, any bank or trust company desiring to thus voluntarily liquidate, shall make application to the state superintendent of banks for permission to so liquidate and in addition to complying with the laws of the state of Montana governing the liquidation of corporations, shall comply in all respects with the requirements or rules and regulations of the state

superintendent of banks governing such voluntary dissolution. The board of directors of any bank, whose stockholders have voted to place it in voluntary liquidation, shall appoint a liquidating agent to wind up the affairs of such bank. Such liquidating agent, on authority of the board of directors, shall have power to execute deeds for the transfer of real property and to do any and all things necessary to effect the proper liquidation of such bank. Nothing in this section contained shall prevent the state superintendent of banks from taking charge at any time when in his opinion the interest of creditors or stockholders is not being protected, the decision of the superintendent of banks in said matters to be controlling.

History: En. Sec. 20, Ch. 89, L. 1927; amd. Sec. 2, Ch. 145, L. 1931; amd. Sec. 1, Ch. 10, L. 1935.

Collateral References

Banks and Banking⇐64, 308, 316.

9 C.J.S. Banks and Banking §§ 469-471, 1026, 1064.

10 Am. Jur. 2d 795, Banks, § 826 et seq.

Power of corporation after expiration or forfeiture of its charter. 47 ALR 1288 and 97 ALR 477.

Right of savings bank to liquidate voluntarily and close business. 69 ALR 1255.

CHAPTER 4

STOCKHOLDERS' LIABILITY

Section 5-401. Stockholders' liability—extent thereof—effect of certain transfers of stock.
5-402. Liquidating officer to enforce stockholders' liability—general powers—compromise of claims—limitation on attorney's fees and costs—distribution to creditors.
5-403. Scope of term "liquidating officer"—superintendent of banks to file inventory with district court—report.

5-401. (6014.25) **Stockholders' liability—extent thereof—effect of certain transfers of stock.** The stockholders of every bank shall be severally and individually liable, equally and ratably, and not one for the other, for all contracts, debts, and engagements of such corporation, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares. No person holding stock as executor, administrator, guardian, or trustee, and no person holding such stock as a pledge or collateral security, shall be personally subject to any liability as stockholders in such corporation; but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, guardian, or trustee, shall be liable in like manner and to the same extent as the testator, intestate, ward, or the person interested in such trust fund would have been liable if he had been living or competent to act and hold the stock in his own name.

The stockholders in any bank who shall have transferred their shares or registered the transfer thereof, within six (6) months last before the failure of said bank to meet its obligations, or with knowledge of such impending failure, shall be liable to the same extent, as if they had made no such transfer to the extent that the subsequent transferee fails to meet such liability; but this provision shall not be construed to affect in any

way recourse which such stockholder might otherwise have against those in whose name such shares are registered at the time of such failure.

History: Enacted as part of Sec. 21, Ch. 89, L. 1927; amd. Sec. 1, Ch. 110, L. 1935.

Distribution of Assets of Insolvent Bank

There was nothing in the language of this section amendatory of section 6036, R. C. M. 1921 (since repealed) relating to the distribution of the assets of an insolvent bank to its creditors, indicative of a clear legislative intent to change its substance. The section was but declaratory of the law as found in section 6036, R. C. M. 1921 (since repealed) and as construed in this case, that the assets must be distributed ratably under the rule that "equity is equality." State v. Wibaux County Bank, 85 M 532, 539, 281 P 341.

Liability for Torts Excluded

Before the last amendment of this section it was held in an action by a judgment creditor of a suspended state bank, against a stockholder thereof to recover from him his proportion of a judgment secured against the bank in a tort action, that recovery could not be had under this section, since the word "debts" cannot be extended to a liability for a tort even though the claim be reduced to judgment. Capital Nat. Bank of St. Paul v. Bartley, 101 M 591, 600, 56 P 2d 728.

Liability in Case of Transfer—National Bank

A stockholder in a national bank transferring stock within sixty days prior to the failure of the bank is in the same position, so far as his statutory liability is concerned, as though no transfer had been made, and such liability, primary in character, continues for sixty days after transfer in any event; where, however, he transfers his stock more than sixty days before the bank's failure, he is not liable if transfer made in good faith and when not chargeable with knowledge of impending failure. Federal Deposit Ins. Corp. v. Peterson, 104 M 447, 452, 67 P 2d 305.

References

Merchants Nat. Bank Bldg. v. Farmers State Bank of Cut Bank, 111 M 559, 562, 111 P 2d 806.

Collateral References

Banks and Banking⇨46-49, 293, 313.

9 C.J.S. Banks and Banking §§ 965, 966, 1048.

10 Am. Jur. 2d 83, Banks, § 73.

Payments by stockholders applicable upon double liability. 23 ALR 1367; 45 ALR 1215; 56 ALR 527; 83 ALR 147 and 120 ALR 511.

"Who are depositors" or what constitutes "deposit" within provisions imposing upon the stockholders of a banking institution additional liability for the payment of depositors. 58 ALR 1389.

Constitutional provision fixing liability of stockholders as limitation of power of legislature in that regard. 63 ALR 870.

Validity of restrictions on alienation or transfer of corporate stock. 65 ALR 1159 and 61 ALR 2d 1318.

Applicability of constitutional or statutory provisions relating to added liability of stockholders to holders of stock issued, or stockholders of corporations organized, before their enactment. 72 ALR 1252.

Stockholders' statutory added liability as affected by death of stockholder. 79 ALR 1537 and 96 ALR 1466.

Stockholder's statutory liability as assignable or subject to sale. 82 ALR 1285 and 159 ALR 1114.

Transfer of bank or other corporate stock to corporation issuing it, as releasing transferor from stockholders' statutory added liability. 86 ALR 72.

Statutory added liability of holders of bank stock, or other corporate stock, the issue of which was ultra vires, invalid or irregular. 86 ALR 816.

Statutory superadded liability of stockholders as affected by reorganization, consolidation, or merger of corporation. 89 ALR 770 and 154 ALR 427.

Statutory liability of stockholder of bank or other corporation as affected by change in or renewal of corporation's obligations. 97 ALR 630.

Stockholders' statutory liabilities as affected by alleged defects or irregularities in organization of corporation. 102 ALR 327.

Statutory added liability of stockholders of bank or other corporation as affected by transfer of stock after closing thereof or appointment of receiver therefor. 103 ALR 689.

Liquidation or other proceeding by government against bank or other corporation, as suspending stockholder's superadded liability. 122 ALR 945.

5-402. Liquidating officer to enforce stockholders' liability—general powers—compromise of claims—limitation on attorney's fees and costs—distribution to creditors. At any time after taking possession of a bank

for the purpose of liquidation, the liquidating officer, duly qualified under the laws, as soon as he ascertains that the assets of such bank will be insufficient to pay its debts and liabilities may proceed to collect and enforce the stockholders' liability. For that purpose he may institute and maintain, in his own name as such liquidating officer appropriate suits or actions in any state or federal court of competent jurisdiction. He may receive and receipt for moneys received on account of stockholders' liability and any money so paid to the liquidating officer by a stockholder in whole or partial satisfaction of his liability, shall not be deemed paid voluntarily, but shall give the stockholder the same protection to the extent of the amount paid as if the payments were made after suit by creditor or liquidating officer. The liquidating officer is authorized by and with the consent of the court having jurisdiction of such liquidation to compromise, settle and compound claims for stockholders' liability and such settlements and compromises when approved by the court shall be legal and binding upon all parties concerned, including creditors.

All sums collected by a liquidating officer on account of stockholders' liability, either received from voluntary payments or collected by suits, settlements or compromises, shall be distributed to the creditors of the bank according to their several rights in the same proportion as the amount of a given claim of a creditor bears to the amount of the claims of all creditors, and without regard to the rank or class or character of claims and without diminution, except that the said liquidating officer may deduct from amounts collected, the court costs or attorney's fees, such attorney's fees to be allowed for not more than ten per cent (10%) of the amount collected, provided that the ten per cent (10%) allowed for attorney's fees shall not apply to collections which are made outside of the state of Montana and other expenses incurred by him in the prosecution of any action for the collection thereof.

History: Enacted as part of Sec. 21, Ch. 89, L. 1927; amd. Sec. 1, Ch. 110, L. 1935.

5-403. Scope of term "liquidating officer"—superintendent of banks to file inventory with district court—report. The liquidating officer of a bank shall have the power to decide when the assets of a failed bank are not sufficient to pay the debts, contracts, engagements and liabilities and he may determine the question of the time when and the court where necessary suits shall be instituted subject to the general provisions of law governing venue and place of trial. For the purposes of this section the term "liquidating officer" shall be held to include every person legally empowered to liquidate the business and affairs of a state bank whether the same be by superintendent of banks, his deputies and agents and also all receivers of state banks now or hereafter qualified to liquidate a state bank under any law of Montana, provided, however, that the provisions of this section shall not impose any liability on any stockholder of a bank which is a member of the Federal Deposit Insurance Corporation. The superintendent of banks shall within ninety (90) days after taking charge of an insolvent bank, cause to be filed with the district court having jurisdiction, a complete inventory of all of the property and assets of such insolvent bank, such as furniture, fixtures, real estate, mortgages, bonds, notes, secured and unsecured, and

thereafter he shall every six months or oftener, if so required by the court, cause to be made and filed with the court a report showing the conditions of the liquidation of such bank, the assets that have been liquidated and collected and the amounts and manner of payments which may have been made to creditors and the manner in which claims have been handled and also showing the assets on hand. The report to also contain such other information as the court may deem proper and request or require, so that the court and the public may be apprised of the condition of such bank and the manner in which it is being liquidated with respect to the collection and sale of assets belonging to such bank and the manner in which claims are being paid. Such report and account shall be set for hearing upon such notice as the court may require and if found to be correct shall be approved by the court.

History: Enacted as part of Sec. 21, Ch. 89, L. 1927; amd. Sec. 1, Ch. 110, L. 1935.

CHAPTER 5

MISCELLANEOUS REGULATORY PROVISIONS

Section 5-501. Transfer of shares of stock.
5-502. Elections—how conducted.
5-503. Investment of capital of savings banks.
5-504. Real estate which banks may purchase, hold or convey.
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5-501. (6014.26) **Transfer of shares of stock.** The delivery of a certificate of stock to a bona fide purchaser or pledgee for value, together with

a written transfer of the same, or a written power of attorney to sell, assign, and transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title as against the creditors of the transferor and subsequent purchasers; but no such transfer shall affect the right of the corporation to pay any dividend due upon the stock, or treat the holder of record as the holder in fact, until such transfer is recorded upon the books of the corporation, or a new certificate issued to the person to whom it has been transferred.

History: En. Sec. 22, Ch. 89, L. 1927.

Cross-Reference

Assessment of shares for taxation, sec. 84-307.

Collateral References

Banks and Banking⇨40, 292, 312.

9 C.J.S. Banks and Banking §§ 64, 959, 1046.

10 Am. Jur. 2d 64, 66, Banks, §§ 45, 47-54.

Failure to enter transfer of stock on corporate books as affecting liability of transferee for calls or assessments. 60 ALR 112.

Right of corporation to refuse to register transfer of stock because of stockholder's indebtedness to it, where transfer is by operation of law. 65 ALR 220.

Rights, duties and liability in connection with transfer of stock of decedent. 7 ALR 2d 1240.

5-502. (6014.27) **Elections—how conducted.** All elections must be by ballot, and every stockholder shall have the right to vote in person or by proxy the number of shares standing in his name for as many persons as there are directors to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit. The board of directors may prescribe the form and manner of executing proxies. The shares of stock of an estate of a minor, or of a person of unsound mind, may be represented and voted by his guardian, and of a deceased person by his executor or administrator, and every person who shall pledge his stock may nevertheless represent and vote the same at all meetings, unless the pledgor appoints the pledgee as a proxy in accordance with the bylaws of the company. The board of directors may provide for the closing of the stock books of the company for such length of time prior to the annual election as may be by it deemed convenient for the making up of the lists of the stockholders. Any regular or called meeting of the stockholders may adjourn from day to day or from time to time, if for any reason, there is not present a quorum or no election is had, such adjournment and the reasons therefor being recorded in the minutes of said meeting. All elections and other actions at meetings of stockholders or directors shall be conducted in accordance with the laws of the state of Montana governing corporations in general, except as herein otherwise specially provided.

History: En. Sec. 23, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇨43, 51, 293, 294, 313, 314.

9 C.J.S. Banks and Banking §§ 60, 67-69, 72, 110-115, 965, 966, 969-977, 1048, 1051, 1053.

5-503. (6014.28) **Investment of capital of savings banks.** At least one-half of the paid-in capital of a savings bank, and one-half of the whole amount deposited therein, must be invested in bonds or other securities of the United States, or any of the states of the United States, or any county,

city, town or school district of this state, on which interest is regularly payable, or Federal Land Bank Bonds or loaned or unencumbered real estate worth at least double the amount to be secured. The remainder may be invested in the aforesaid character of securities, or in approved personal securities, but no loan must be made on personal securities of less than two responsible persons, or collateral security to be approved by the directors, and no loan upon personal security shall be made to any one person or copartnership to an amount exceeding ten thousand dollars. No president, vice-president, director or other officer or servant of a savings bank shall directly or indirectly borrow any of the funds of such bank or of its deposits, or in any manner use the same in his private affairs or business, nor shall any director receive any pay, salary, or emolument until such interest as the directors shall have determined to allow depositors shall have been provided for in accordance with the regulations of the corporation.

The real estate which such corporation may lawfully purchase, hold and convey is:

1. Such as may be necessary for the proper transaction of its business, not exceeding in value fifty thousand dollars.

2. Such as is mortgaged to it in good faith for moneys loaned in pursuance of the provisions of this act, or given as security for money loaned or advanced.

3. Such as is purchased at the sale on judgment or decree obtained or rendered on money so loaned or advanced.

Savings banks organized under the provisions of this act must not purchase, hold, or convey real estate in any other case, or for any other purpose than herein specified, and shall not buy or sell any personal property, except such as may be necessary for the proper transaction of its business, or such as may have been pledged, mortgaged, or assigned to it to secure moneys loaned or advanced; provided, the term "savings bank" as used in this section, shall mean any bank organized to do the business specified in section 5-105 of this code.

History: En. Sec. 24, Ch. 89, L. 1927.

Cross-Reference

Investments authorized, certain government guaranteed bonds, secs. 35-142, 35-143.

Collateral References

Banks and Banking⇐302.

9 C.J.S. Banks and Banking §§ 1008-1014.

5-504. (6014.29) **Real estate which banks may purchase, hold or convey.** Banks organized under the provisions of this act may purchase, hold, or convey real estate as follows:

1. Such as is necessary for the proper transaction of its business, but it shall not invest an amount exceeding fifty per cent (50%) of its paid-up capital and surplus in the lot and building in which the business of the company is carried on, furniture and fixtures, vaults and safety vaults, and boxes necessary or proper to carry on its banking business.

2. Such as is mortgaged to it in good faith by way of security for loans previously made or moneys due to the corporations.

3. Such as is conveyed to it in satisfaction of debts previously contracted in the course of its business.

4. Such as it purchases at sales under judgments, decrees, or mortgages held by the company.

Real estate acquired in the manner set forth in subdivisions 3 and 4 hereof shall not be held longer than period of five years from the date of acquisition, unless special written permission to do so be granted by the superintendent of banks. Said real estate to be carried on the books of the bank for an amount not greater than the cost thereof to the bank, including costs of foreclosure and other expenses of acquiring title.

History: En. Sec. 25, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐95, 215, 315 (1).
9 C.J.S. Banks and Banking §§ 163, 405, 1059-1063.
10 Am. Jur. 2d 250, Banks, § 279 et seq.

Assumption of mortgage or lien by bank as ultra vires. 91 ALR 177.

Power of bank to agree to repurchase real estate mortgage or other securities sold by it. 120 ALR 485.

Noncompliance by bank with statutory provisions relating to loans or discounts as defense to recovery of loan or enforcement of its security. 125 ALR 1512, 1525.

5-505. (6014.30) **Trust and investment companies—dealing in property and investment of capital.** Trust and investment companies may lease, purchase, hold, and convey all such real or personal property as may be necessary to carry on their authorized business, as well as such real or personal property as the board of directors may deem necessary to acquire in the enforcement or settlement of any claims or demands arising out of business transactions, and may execute and issue, in the transaction of their business, all necessary receipts, certificates, and contracts. The board of directors of any such corporation is authorized to invest the capital and assets of said corporation, and keep the same invested, in securities to be approved by the said board, and it shall be lawful for the board to make such investments of its capital and assets, and of the funds accumulated by its business, including money, deposits, or any part thereof, in negotiable or nonnegotiable notes or bonds, mortgages on unencumbered real estate, stocks and bonds of corporations, or bonds and warrants of any county, city, town or school district of this state, or any other state of the United States, legally authorized to issue the same, or bonds or obligations of the United States.

History: En. Sec. 26, Ch. 89, L. 1927.

Cross-Reference

Investments authorized, secs. 35-142, 35-143.

5-506. (6014.31) **Limitation on real estate loans.** Any commercial bank organized under the laws of the state of Montana may make real estate loans, secured by first liens upon improved real estate, including improved farm land and improved business and residential properties and may purchase any obligation so secured when the entire amount of such obligation is sold to the bank. Provided that, the amount of any such loan hereafter made shall not exceed fifty per centum (50%) of the appraised value of the real estate offered as security, and no such loan shall be made for a longer period than five (5) years, except that:

(1) Any such loan may be made in an amount not to exceed sixty per centum (60%) of the appraised value of the real estate offered as security and for a term not longer than twenty (20) years if such loan

is secured by an amortized mortgage, deed of trust or other such instrument, under the terms of which the installment payments are sufficient to amortize forty per centum (40%) or more of the principal of the loan within a period of not more than twenty (20) years; and

(2) No such commercial bank shall make such loans in an aggregate sum in excess of the amount of its capital stock paid in and unimpaired plus the amount of its unimpaired surplus or in excess of sixty per centum (60%) of the amount of its time and saving deposits, whichever is the greater.

Loans made to finance the construction of residential or farm buildings and having maturities of not to exceed six (6) months, whether or not secured by a mortgage or a similar lien on real estate upon which the residential or farm building is being constructed, shall not be considered as loans secured by real estate within the meaning of this act, but shall be classed as ordinary commercial loans, provided that no commercial bank shall invest in or be liable on any such loans in an aggregate amount in excess of fifty per centum (50%) of its actually paid-in and unimpaired capital.

Loans made to establish rural or commercial businesses which are in whole or in part discounted or loaned against as security by a federal reserve bank for any part of which a commitment shall have been made by a federal reserve bank or in which the Reconstruction Finance Corporation co-operated or purchases a participation in, shall not be subject to the restrictions or limitations of this act upon loans secured by real estate, provided any commercial bank in this state shall from time to time have the same authority to make loans upon real estate as may be given by acts of Congress of the United States or the federal reserve system to national banks or bank members of the federal reserve system.

(3) The foregoing limitations and restrictions shall not prevent the renewal or extension of loans heretofore made and shall not apply to real estate loans which are insured under the provisions of any act of the Congress of the United States; and said limitations and restrictions shall not apply to the making, extension or renewal of any loans which are made under subchapter II of the act of Congress, known as the Servicemen's Readjustment Act of 1944, or any amendment thereof or supplement thereto, as to any part of such loans.

These provisions, however, shall not prevent any bank from taking another and immediately subsequent mortgage or deed of trust when it already holds a first mortgage or deed of trust thereon on such real estate, nor from accepting a second lien on real estate to secure the repayment of a debt previously contracted in good faith; nor shall it prevent subsequent liens of any kind from being taken to secure the payment of a debt previously contracted in good faith, when, in the judgment of the directors of such bank, such subsequent liens are necessary further to secure the payment of any debts and save such bank from loss; provided, the term "commercial bank" as used in this section, shall mean a bank organized to do the business specified in sections 5-104 to 5-108 of this code, only.

History: En. Sec. 27, Ch. 89, L. 1927; amd. Sec. 1, Ch. 90, L. 1945; amd. Sec. 1, Ch. 25, L. 1959. amd. Sec. 1, Ch. 23, L. 1941; amd. Sec. 1,

Compiler's Note

The Servicemen's Readjustment Act of 1944, referred to in this section, was repealed by act of Congress September 2, 1958, Public Law 85-857, § 14, 72 Stat. 1268.

Collateral References

Banks and Banking⇐178.
9 C.J.S. Banks and Banking §§ 383, 385, 386, 388, 398.

5-507. (6014.32) **Banks empowered to join federal reserve bank.** Any bank is hereby authorized and empowered to join or associate itself with the federal reserve bank, or any branch thereof, and nothing herein contained shall prevent or prohibit any bank from joining or associating itself with any such banks or branch thereof, or from investing any part of its capital or surplus in the stock of such bank, in accordance with the terms and provisions of the act of Congress creating such association. Any bank joining or associating itself with such bank shall be permitted to conform to and transact its business in accordance with the terms and provisions of the act of Congress creating the same, and the rules and regulations of such federal reserve bank.

History: En. Sec. 28, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐288½.
9 C.J.S. Banks and Banking §§ 741-845.

5-508. (6014.33) **Business prohibited unless under superintendent of banks—use of certain words prohibited—court may enjoin.** No person, firm, company, copartnership, or corporation, either domestic or foreign, not subject to the supervision of the superintendent of banks, and not required by the provisions of this act to report to him, and which has not received a certificate to do a banking business from the superintendent of banks, shall advertise that he or it is receiving or accepting money or savings for deposit, investment, or otherwise, and issuing notices or certificates of deposit therefor, or shall make use of any office sign, at the place where such business is transacted, having thereon any artificial or corporate name, or other words indicating that such place or office is the place or office of a bank or trust company, or that deposits are received there or payments made on check, or any other form of banking business, transacted, nor shall any such person, or persons, firm, company, copartnership, or corporation, domestic or foreign, make use of or circulate any letterheads, bill-heads, blank notes, blank receipts, certificates, or circulars, or any written or printed or partly written and partly printed paper, whatever, having thereon any artificial or corporate name or other word or words indicating that such business is the business of a bank, savings bank, or trust or investment company; nor shall any such person, firm, company, copartnership, or corporation, or any agent of a foreign corporation, not having an established place of business in the state, solicit or receive deposits or transact business in the way or manner of a bank, savings bank, trust or investment company, or in such a way or manner as to lead the public to believe that its business is that of a bank, savings bank, trust, or investment company. Nor shall any person, firm, company, copartnership, or corporation, domestic or foreign, not subject to the supervision of the superintendent of banks, and not required by the provisions of this act to report to him, and which has not received from the superintendent of banks a certificate to do a banking business, hereafter transact business under any name or title

which contains the word "bank," "banker," "banking," "savings bank," "saving," "trust," "trustee," "trust company," or "investment company." Any person, firm, company, copartnership, or corporation, domestic or foreign, violating any provision of this section shall forfeit to the state one hundred dollars a day for every day or part thereof during which such violation continues. Upon action brought by the superintendent of banks, the court may issue an injunction restraining any such person, firm, company, copartnership, or corporation from further using such words in violation of the provisions of this section, or from further transacting business in such a way or manner as to lead the public to believe that its business is that of a bank, savings bank, trust, or investment company, during the pendency of such action, and for all time, and may make such other order or decree as equity and justice may require.

History: En. Sec. 29, Ch. 89, L. 1927.

5-509. (6014.34) **Capital stock to be paid up—action by superintendent of banks—certain advertising prohibited.** Every person, firm, company, copartnership, or corporation, domestic or foreign, advertising that he or it is receiving or accepting money or savings, and issuing notes or certificates of deposit therefor, or advertising that he or it is transacting the business of a bank, savings bank, or trust company, or making the use of any office sign at the place where such business is transacted, having thereon any artificial or corporate name, or other words indicating that such place or office is the place or office of a bank, savings bank, or trust company, or that deposits are received there or payments made on check or that interest is paid on deposits, or that certificates of deposit, either with or without interest, are being issued or that any other form of banking business is transacted, and every person, firm, company, copartnership or corporation, domestic or foreign, making use of or circulating any letterheads, bill-heads, blank notes, blank receipts, certificates, or circulars, or any written or printed, or partly written and partly printed paper whatever, having thereon any artificial or corporate name, or advertising that such business is the business of a bank, savings bank, or trust company, must have the proper capital stock paid in and set aside for the purpose of transacting such business, and must have received from the superintendent of banks, as provided for in this act, a certificate to do a banking business. Any person, firm, company, copartnership, or corporation, domestic or foreign, violating any provision of this section shall forfeit to the state one hundred dollars a day for every day or part thereof during which such violation continues. Upon action brought by the superintendent of banks, the court may issue an injunction restraining any such person, firm, company, copartnership, or corporation from further violating any provision of this section, and may make such further order or decree as equity and justice may require. Every person, firm, company, copartnership, or corporation doing any of the things or transacting any of the business defined in this section, must transact such business according to the provisions of the Bank Act, and the superintendent of banks or his deputy or examiners, shall have authority to examine the accounts, books, papers, cash, and credits of every such person, firm, company, copartnership, or corporation, domestic or foreign, in order to ascertain whether

such person, firm, company, copartnership or corporation has violated or is violating any provisions of this section.

History: En. Sec. 30, Ch. 89, L. 1927.

9 C.J.S. Banks and Banking §§ 61-63, 959, 1046.

Collateral References

Banks and Banking⇐39, 292, 312.

5-510. (6014.35) **Foreign corporations.** Any corporation organized under the laws of any country or state other than this state, which has complied with all of the laws of this state pertaining to foreign corporations and is not engaged in the business of banking or receiving money on deposit in this state, may lend money in this state, and, for that purpose, may maintain offices in this state, and sue and be sued in this state under its proper corporate name, notwithstanding any prohibitions contained in this act as to the use of any words in the name, sign, or advertising matter of corporations not under the supervision of the superintendent of banks.

History: En. Sec. 31, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐18.
9 C.J.S. Banks and Banking § 37

5-111. (6014.36) **Advertisement of capital must state amount paid in.** No bank, or officer thereof, shall advertise in any manner, or publish any statement of the capital authorized or subscribed, unless it or he advertise and publish in connection therewith, the amount of capital actually paid up. No bank shall publish a statement of its resources or liabilities in connection with those of any other bank, unless such statement shall show the resources and liabilities of each bank separately.

History: En. Sec. 32, Ch. 89, L. 1927.

5-512. (6014.37) **Keeping of book with list of stockholders.** Every bank shall keep in its offices, in a place accessible to the stockholders, depositors, and creditors thereof, and for their use, a book containing a list of stockholders in such corporation, and the number of shares of stock held by each.

History: En. Sec. 33, Ch. 89, L. 1927.

Name on Stock Register

The presumption of liability for an assessment of shares of stock in an insolvent bank arising from the presence of a person's name on its stock register is rebutted by evidence that a bona fide transfer of the stock was made and that the transferor performed every duty imposed by law to secure the transfer on the bank's stock registry. Mitchell v. Banking Corp., 95 M 9, 14, 23 P 2d 978.

References

Mitchell v. Banking Corp., 95 M 23, 27, 24 P 2d 124.

Collateral References

Banks and Banking⇐16.
9 C.J.S. Banks and Banking § 36.

5-513. (6014.38) **Dividends, surplus, losses and bad debts.** The directors of any bank may, at certain times and in such manner as its bylaws prescribe, declare and pay dividends to the stockholders of so much of the net undivided profits of the banks as may be appropriated for that purpose, but every bank shall, before declaring any such dividend, carry at least twenty-five per cent of its net earnings for the period covered by the dividend, to its surplus, until such surplus shall amount to fifty per centum of its paid-up capital stock. The whole or any part of such surplus may at any

time be converted into paid-in capital and in such event the surplus shall be restored in the manner above provided until it amounts to fifty per cent of the aggregate paid-up capital stock. A larger surplus may be created and nothing herein contained shall be construed as prohibitory thereof. Provided, however, that no such dividend shall be declared or paid, while there shall remain among the ledger assets of the bank, any item which shall properly be classified as a bad debt.

Under the terms of this section and before any dividend can be paid, all debts due a bank on which the interest is past due and unpaid for a period of twelve months after maturity, unless the same be well secured, or in legal process of collection, and all judgments held by the bank after two years from the date of rendition, exclusive of time consumed in appeal, unless payments have been made, shall be considered bad debts. Such bad debts as hereinbefore defined, shall be charged off the books of such bank before any dividend is declared.

Losses sustained by a bank in excess of its undivided profits, may be charged to and paid from the surplus, in which event such surplus shall be restored in the manner above provided, in the amount required by this act.

History: En. Sec. 34, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐41, 292, 312.
9 C.J.S. Banks and Banking §§ 65, 959, 1046.

Validity of cancellation of accrued dividends on preferred bank stock. 8 ALR 2d 893.

5-514. (6014.39) **Safe deposit department.** Any bank may conduct a safe deposit department, but shall not invest more than one-tenth of its capital and surplus in such safe deposit department. The liability of any bank for the safe-keeping and protection of the contents of safety deposit boxes shall be determined by the contract endorsed on the receipt delivered to the renter of said box at the time of the rental, but in any event the obligation of the bank shall be limited to the exercise of ordinary diligence and care to protect the contents of the box from loss or damage by fire, theft or other causes.

History: En. Sec. 35, Ch. 89, L. 1927.

Cross-Reference

Safe deposit box, joint tenancy, sec. 67-309.

Collateral References

Banks and Banking⇐39-47.
9 C.J.S. Banks and Banking § 61 et seq.

5-515. (6014.40) **Purchase or loan of own capital stock prohibited.** No bank shall purchase or invest its capital or surplus, or money of its depositors, or any part of either, in shares of its own capital stock; nor loan its capital or surplus, or the money of its depositors, or any part of either, on shares of its own capital stock, unless such purchase or loan shall be necessary to prevent loss to such bank on debts previously contracted in good faith. Every person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of such stock.

History: En. Sec. 36, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐91, 302, 315 (1).
9 C.J.S. Banks and Banking §§ 166, 1008 et seq., 1054 et seq.
10 Am. Jur. 2d 262, Banks, § 294.

Construction, application and effect of provision of federal statute forbidding national banks to loan on security of, or be purchaser or holder of, its own shares. 51 ALR 346.

5-516. (6014.41) **Sale of securities by officer to bank.** No director, officer, employee, or controlling stockholder of any bank, shall, directly or indirectly, for his own account, for himself, or as the partner or agent of others, sell or transfer, or cause to be sold or transferred, to the bank of which he is a director, officer, employee, or controlling stockholder, any note or bond secured by any mortgage or trust deed on real estate, or any contract arising from the sale of real estate, in which such director, officer, employee, or controlling stockholder is personally or financially interested, without a vote of the majority of the board of such bank, duly noted upon the minutes of the meeting at which such transaction is decided upon, which minutes shall be signed by a majority of the board. Any director, officer, employee, or controlling stockholder of any bank who knowingly violates or consents to the violation of this provision shall be guilty of a felony.

History: En. Sec. 37, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐43, 54 (6), 61, 293, 294, 313, 314.

9 C.J.S. Banks and Banking §§ 67 et seq., 121, 148 et seq., 965 et seq., 1048 et seq.

5-517. (6014.42) **Limit on amount of bond issue.** No commercial bank shall purchase, agree to purchase, or underwrite any bond issue in excess of ten per centum of its assets, except bonds of the United States, of the state of Montana, of the cities, towns, counties, or school districts of this state.

History: En. Sec. 38, Ch. 89, L. 1927.

5-518. (6014.43) **Disposition of acquired stock.** No commercial or savings banks shall purchase or invest its capital or surplus, or money of its depositors, or any part of either, in the capital stock of any corporation, unless the purchase or acquisition of such capital stock shall be necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock so purchased or acquired shall be sold by such bank within six months thereafter, if it can be sold for the amount of the claim of such bank against it; and all capital stock thus purchased or acquired must be sold for the best price obtainable by said bank within one year after such purchase or acquisition. Every person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of such stock.

History: En. Sec. 39, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐194, 302.

9 C.J.S. Banks and Banking §§ 166, 167, 184, 1008-1014.

10 Am. Jur. 2d 260, Banks, § 291.

Contract by national bank for purchase of stock in another corporation as ultra vires. 89 ALR 1308.

Noncompliance by bank with statutory provisions relating to loans or discounts as defense to recovery of loan or enforcement of its security. 125 ALR 1512, 1527.

5-519. (6014.44) **Obtaining property by fraud—false report—refusal to permit inspection of books.** A director, officer, agent, or employee of any bank who

1. Knowingly receives or possesses himself of any of its property, otherwise than in payment for a just demand, and with intent to defraud, omits

to make or to cause or direct to be made a full and true entry thereof in its books and account; or,

2. Concurs in omitting to make any material entry thereof; or,

3. Knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition, containing any material statement which is false; or,

4. Having the custody or control of its books, willfully refused or neglects to make any proper entry in the books of such corporation as required by law, or to exhibit, or allow the same to be inspected and extracts to be taken therefrom by the superintendent of banks, his chief deputy, or any of his examiners, shall be guilty of a felony.

History: En. Sec. 40, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐61, 294, 314.

9 C.J.S. Banks and Banking §§ 148-154, 969-977, 1051, 1053.

5-520. (6014.45) **Overdraft by officer or employee—receiving personal profit from loan.** Any officer, director, agent, teller, clerk or employee of any bank who either,

1. Knowingly overdraws his account with such bank, and thereby obtains the money, notes, or funds of any such bank; or,

2. Asks or receives, or consents or agrees to receive, any commission, any premium on insurance, emolument, gratuity, or reward, or any money, property, or thing of value for his own personal benefit or of personal advantage, for procuring or endeavoring to procure for any person, firm, or corporation any loan from, or the purchase or discount of any paper, note, draft, check, or bill of exchange, by such bank, or for authorizing and permitting any person, firm, or corporation to overdraw any account with such bank, is guilty of a misdemeanor.

History: En. Sec. 41, Ch. 89, L. 1927.

Cross-References

Conversion by officers, penalty, sec. 94-2715.

Officer overdrawing account, penalty, sec. 94-2307.

Commission for Procuring Loan

This section prohibiting a bank officer from receiving a commission for procuring a loan from the bank with which the officer is connected did not prohibit the bank from charging a commission for services rendered as an agent in procuring the loan from another bank. Sullivan v. Mountain, 117 M 224, 230, 160 P 2d 447, explained in 123 M 518, 535, 216 P 2d 925.

5-521. (6014.46) **Waiver of stockholders' liability.** No bank shall make any contract with any of its depositors whereby the stockholders' liability provided for by this act is in any manner waived, and if any such contract shall be so made, such contract shall be void.

History: En. Sec. 42, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐47 (3), 293, 313.

9 C.J.S. Banks and Banking §§ 86, 965, 966, 1048.

5-522. (6014.47) **Purchase of obligation of bank by officer.** No directors, officer, agent or other employee of any bank, shall, directly or indirectly, for his own personal benefit, purchase or sell or be interested in the purchase or sale of any obligation of said bank, or of any of the assets of said bank, for a sum less than shall appear upon the face of the obliga-

tion or obligations so purchased or sold. Every person violating the provisions of this section shall, in addition to the general penalties of this act, forfeit to the state twice the nominal amount or face value of such obligations or assets so purchased or sold.

History: En. Sec. 43, Ch. 89, L. 1927.

Acquiring Land on Mortgage Foreclosure

The value of land acquired on mortgage foreclosure sale was the amount of the bank's investment, not the amount at which it was carried on the bank's books after $2,000 of the debt due had been charged off as a loss. Charging items off the books as doubtful paper amounts only to reclassification of assets, and they may not be transferred or conveyed except for a valuable consideration. Johnson v. Kaiser, 104 M 261, 274, 65 P 2d 1179.

Buying through Third Person

Where bank president, acting for the bank, executed a quitclaim deed to a third person for one dollar consideration, who in turn executed a like deed to the president for a like consideration, judgment declaring the transaction void, affirmed, under the facts considered. Johnson v. Kaiser, 104 M 261, 274, 65 P 2d 1179.

Setting Aside Transfer

An officer dealing privately with the bank acts in a fiduciary relation calling for the utmost fairness and candor, and when attacked, the burden is on him to show dealings were fair and honest. Disputable presumptions that a person is innocent of wrong, transactions fair and legal, ordinary course of business followed, the law obeyed (93-1301-7) relied upon by defendant in action to set aside fraudulent conveyance, fade away in the face of contrary facts satisfactorily established. Johnson v. Kaiser, 104 M 261, 274, 65 P 2d 1179.

Collateral References

Banks and Banking⇨54 (6), 294, 314.

9 C.J.S. Banks and Banking §§ 121, 969-977, 1051, 1053.

5-523. (6014.48) **Limitations on loans—liabilities—what included therein—reduction when excessive.** The total loans to any person, copartnership or corporation by any bank, including loans to a copartnership, and loans to the several members thereof, shall at no time exceed twenty per centum (20%) of the amount of the unimpaired capital and surplus of such bank. The discount of bills of exchange drawn in good faith against actual existing values, the discount of bankers, acceptances of other banks, the discount of commercial or business paper actually owned by the person negotiating the same, and the obligations of the United States or general obligations of any state or of any political subdivision thereof, or obligation issued under authority of the Federal Farm Loan Act, shall not be considered as money borrowed, nor shall the foregoing limitations apply to loans made on warehouse receipts and bills of lading, when such warehouse receipts and bills of lading cover nonperishable commodities of the marketable value of at least one hundred twenty per cent (120%) of the amount loaned thereon. Loans or obligations shall not be subject under this section to any limitation based upon such capital and surplus to the extent that they are secured or covered by guaranties, or by commitments or agreements to take over or to purchase the same, made by any federal reserve bank or by the United States or any department, bureau, board, commission or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States.

The combined liabilities of the several members of any firm, copartnership or unincorporated association to the loaning bank shall be included in the liabilities of such firm, copartnership or unincorporated association, and the liabilities of such firm, copartnership or unincorporated association shall be included in the liabilities of any member thereof in determining the foregoing limitations.

When in the judgment of the superintendent of banks, the liabilities of any corporation or the combined liabilities of any corporation and one or more of its stockholders to any bank are excessive, he shall require the reduction thereof to such limits and within such time as he shall prescribe.

History: En. Sec. 44, Ch. 89, L. 1927; amd. Sec. 1, Ch. 71, L. 1943.

Compiler's Note

The Federal Farm Loan Act, referred to in the first paragraph of this section, is compiled in the United States Code as Tit. 12, sec. 641 et seq.

Bank Acting as Agent in Making Loan

This section prohibiting a bank from making a loan to any one individual of more than a certain amount did not prohibit the bank from acting as agent for another in making a loan in excess of the statutory limitation and securing a commission for its services in so doing. Sullivan v. Mountain, 117 M 224, 229, 160 P 2d 477.

Collateral References

Banks and Banking⇨176-187, 302, 315 (4).

9 C.J.S. Banks and Banking §§ 1008-1014, 1058.

10 Am. Jur. 2d 173, Banks, § 188.

Noncompliance by bank with statutory provisions relating to loans or discounts as defense to recovery of loan or enforcement of its security. 125 ALR 1512, 1517.

5-524. (6014.49) **Loans to managing officer.** No bank shall make a loan to any managing officer of such bank, without taking good collateral or other ample and specific security therefor, and when such loan, or a loan made to a director of such bank, banking institution or trust company, exceeds in amount ten per cent (10%) of its capital stock, it shall not be made until first approved by a majority of the directors of such bank, banking institution or trust company, which said approval shall be entered upon the records of such bank, and the signatures of a majority of the board of directors approving same shall be attached thereto, and be and remain a permanent record of such bank.

History: En. Sec. 45, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇨54 (6), 178, 302, 315 (4).

9 C.J.S. Banks and Banking §§ 121, 381, 383, 385, 388, 398, 1008-1014, 1085.

10 Am. Jur. 2d 216, Banks, § 239 et seq.

Construction and application of criminal statutes relating to loans by bank to officers, directors, stockholders, or employees of bank or of banking department. 90 ALR 509.

5-525. (6014.50) **Calculation of profits.** Interest or commissions unpaid, although due or accrued, on debts owing to any bank, shall not be included in calculation of its profits, unless any bank shall keep its books on a complete accrual basis in which event any such bank shall show on its books accrued interest receivable on notes, bonds, and other investments unless the same shall be past due as defined by section 5-513, and shall also carry on its books accrued interest, taxes and expenses payable.

History: En. Sec. 46, Ch. 89, L. 1927; amd. Sec. 1, Ch. 64, L. 1931.

Collateral References

Banks and Banking⇨41, 292, 312.

9 C.J.S. Banks and Banking §§ 65, 959, 1046.

5-526. (6014.51) **Certified checks.** Whenever a check drawn on any bank is certified by any officer or employee of such bank, the amount thereof shall be immediately charged against the account of the person, firm, or corporation drawing the same. It shall be unlawful for any officer or employee of any bank to certify any check drawn upon such bank, unless

the person, firm or corporation drawing the check has on deposit with the bank at the time such check is certified, an amount of money subject to the payment of such check, equal to the amount specified in such check. Any officer or employee of any bank who shall willfully violate the provisions of this section, or shall resort to any device, or receive any fictitious obligation, directly or indirectly, in order to evade the provisions hereof shall be guilty of felony.

History: En. Sec. 47, Ch. 89, L. 1927; amd. Sec. 1, Ch. 9, L. 1947.

Collateral References

Banks and Banking⚖145.
9 C.J.S. Banks and Banking §§ 371-385.

5-527. (6014.52) **Interest not to exceed lawful rate.** No bank shall demand or receive for loans or discounts, a rate of interest exceeding that allowed by law, excepting that it shall be lawful for any bank to receive interest in advance according to the ordinary usages of banking institutions.

History: En. Sec. 48, Ch. 89, L. 1927.

Collateral References

Banks and Banking⚖181, 302, 315 (4).
9 C.J.S. Banks and Banking §§ 394, 1008-1016, 1058.

5-528. (6014.53) **Joint deposits — survivorship.** When a deposit has been made, or shall hereafter be made, in any bank transacting business in this state, in the names of two (2) or more persons, payable to either or payable to either or the survivor, or any survivor, such deposit, or any part thereof, or any interest or dividend thereon, may be paid to any of said persons, whether the other or others be living or not; and the receipt or acquittance of the person so paid shall be a valid and sufficient release or discharge to the bank for any payment so made.

The term deposit shall include certificates of deposit heretofore or hereafter issued.

History: En. Sec. 49, Ch. 89, L. 1927; amd. Sec. 1, Ch. 91, L. 1967.

Husband and Wife Joint Bank Account —Withdrawals

Where husband and wife have a joint bank account to which the former has contributed, the latter may withdraw it and use it as she may choose. Kranjcec v. Belinak, 114 M 26, 32, 132 P 2d 150.

Signature Card as Contract

When a mother and daughter signed a signature card containing a provision that the entire account or any part could be withdrawn by, or upon the order of, either of them, in opening a joint account at the bank, the card amounted to a contract between the parties, and when the daughter drew a check covering practically the entire account, the bank was legally bound to pay it although made without the mother's consent, and the court was bound by the contract; bank not liable in an action for conversion. (See sec. 49-135.) Ludwig v. Montana Bank & Trust Co., 109 M 477, 500, 98 P 2d 377, 379.

References

State Board of Equalization v. Cole, 122 M 9, 195 P 2d 989, 993.

Collateral References

Joint Tenancy⚖3.
48 C.J.S. Joint Tenancy § 3.
10 Am. Jur. 2d 330, Banks, §§ 369-376.

Necessity that check be signed by all persons in whose name the deposit stands. 61 ALR 967.

Right of bank to set off or apply indebtedness of one alone of two or more persons in whose name deposit stands. 103 ALR 493.

Rights of beneficiary under deposit payable to him at death of depositor if not previously paid to latter. 131 ALR 967; 155 ALR 174 and 161 ALR 304.

Deposit of funds belonging to depositor in bank account in name of himself and another. 149 ALR 879.

Right of survivor of parties to bank account in their joint names as affected by provision excluding his right of withdrawal during the lifetime of the other party. 155 ALR 1084.

Parol evidence rule as applied to deposit of funds in name of depositor and another. 33 ALR 2d 569.

Bank's right to apply or set off deposits against debt of depositor not due at time of his death. 7 ALR 3d 908.

Joint bank account as subject to attachment, garnishment, or execution by creditor of one of the joint parties. 11 ALR 3d 1465.

5-529. (6014.54) **Trust deposits — payment.** Whenever any deposit shall be made in any bank by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the bank, in the event of the death of the trustee, the same, or any part thereof, together with the interest or dividends thereon, may be paid to the person for whom said deposit was made.

History: En. Sec. 50, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇨130, 305.

9 C.J.S. Banks and Banking §§ 1000-1002.

5-530. (6014.55) **Deposit by minor.** Whenever any deposit shall be made in any bank, and by and in the name of any minor, the same shall be held for the exclusive right and benefit of such minor, and free from the control or lien of all persons whatsoever, except creditors, and shall be paid, with any interest due thereon, to the person in whose name the deposit shall have been made, and the receipt of such minor shall be a sufficient release or discharge for such deposit to the bank.

History: En. Sec. 51, Ch. 89, L. 1927.

Collateral References

Infants⇨54½.

43 C.J.S. Infants §§ 34, 77.

5-531. (6014.56) **Demand or time deposits.** Demand deposits, within the meaning of this act, shall comprise all deposits payable within thirty (30) days, and time deposits shall comprise all deposits payable after thirty (30) days, and all savings accounts and certificates of deposit which are subject to not less than thirty (30) days' notice before payment.

History: En. Sec. 52, Ch. 89, L. 1927.

References

Conley v. Johnson, 101 M 376, 385, 54 P 2d 585.

Collateral References

Banks and Banking⇨133, 305.

9 C.J.S. Banks and Banking §§ 290, 330, 331, 334, 340, 342, 1000-1002.

5-532. (6014.57) **Reserve requirements.** Every bank, except a reserve bank, shall maintain at all times a reserve of such percentage of its deposit liabilities as shall be determined by the superintendent of banks as hereinafter provided, of which reserve such portion as the board of directors may determine may be on deposit in banks approved by the superintendent of banks as reserve banks. The superintendent of banks is authorized and empowered to raise or lower and to establish reserves which shall be maintained on demand deposits and on time deposits as in his judgment banking conditions may justify, provided such power to raise or lower and to establish reserves shall be limited to a percentage of such deposits not in excess of reserve requirements which may be established from time to time for banks that are members of the federal reserve system nor less than seventy-five per centum (75%) of reserve requirements which may be established from time to time for banks that are members of the federal

reserve system. A bank approved by the superintendent of banks as a reserve bank must at all times maintain a reserve of such percentage or percentages as the superintendent of banks shall determine from time to time, which shall not be less than the percentages hereinbefore specified of its deposit liabilities, of which such portion as the board of directors may determine, may be on deposit in banks approved by the superintendent of banks as reserve banks. Any solvent bank of good repute having a full paid-up capital and surplus of three hundred thousand dollars ($300,000), doing business in the state of Montana, or any of the states of the United States may be designated by the superintendent of banks as a reserve agent for Montana state banking institutions. Such approval or designation may be withdrawn or withheld at any time by the superintendent of banks for cause. Whenever the reserve of any bank shall fall below the amount required herein to be kept, such bank shall not increase its loans or discounts otherwise than by discounting or purchasing bills of exchange payable at sight or on demand, and the superintendent of banks shall notify any bank whose reserve may be below the amount herein required, to make good such reserve. In arriving at deposit liabilities with regard to bank deposits, the net balance of amounts due to and from other banks shall be taken as the basis for ascertaining the deposit liability to banks against which reserves shall be carried, provided, a compliance with the federal reserve banking laws, rules and regulations by member banks shall be held to be a compliance with the reserve requirements and conditions of this act.

History: En. Sec. 53, Ch. 89, L. 1927; amd. Sec. 1, Ch. 6, L. 1967.

Collateral References

Banks and Banking⇐14.
9 C.J.S. Banks and Banking § 13.
10 Am. Jur. 2d 56, Banks, § 31.

5-533. (6014.58) **Borrowed money.** No bank shall at any time become indebted either directly or indirectly for borrowed money or rediscounts in an amount in excess of its paid-up capital and surplus, without first obtaining written authority from the superintendent of banks, provided, that debentures or certificates of indebtedness issued by any investment company to run for a period of three (3) years or more, shall not be included in the deposit liabilities of said investment company, as affected by the provisions of this section, and entitle such federal reserve member banks to the rights and privileges accruing from a compliance with this act.

History: En. Sec. 54, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐97, 295, 315 (1).
9 C.J.S. Banks and Banking §§ 170, 978-984, 1059-1063.
10 Am. Jur. 2d 259, Banks, §§ 289, 290.

CHAPTER 6

STATE BANKING DEPARTMENT—STATE EXAMINER EX OFFICIO SUPERINTENDENT OF BANKS

Section 5-601. State banking department—superintendent of banks—qualifications.
5-602. State superintendent of banks.
5-603. State superintendent of banks—employees.
5-604. Superintendent of banks and employees not to be interested in banks.
5-605. Repealed.
5-606. Payment of expenses of superintendent.

5-601. (6014.59) **State banking department—superintendent of banks—qualifications.** The state banking department of the state of Montana shall be maintained as in this act provided. The state examiner of the state of Montana shall be ex officio superintendent of banks. Said state examiner and ex officio superintendent of banks, hereinafter called the superintendent of banks, or for brevity the superintendent, shall be appointed by the governor and the appointment must be submitted to and confirmed by the senate of the state of Montana. The state examiner and superintendent of banks shall have been a resident of the state of Montana for three (3) years and shall have had at least five (5) years' banking experience in an executive capacity or as an examiner of banks, and active in either of these capacities up to within two (2) years of his appointment.

History: En. Sec. 55, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐17.
9 C.J.S. Banks and Banking § 35.
10 Am. Jur. 2d 43, Banks, § 17.

Examination and supervision of banks by public officers as impairment of charter rights. 8 ALR 898.

Constitutionality, construction, and effect of statute or departmental regulation relating specifically to divulgence of information acquired by public officers or employees. 165 ALR 1302.

5-602. (6014.60) **State superintendent of banks.** The term of office of the superintendent of banks shall be four (4) years from and after his appointment, and it shall be his duty to execute all laws in relation to banks, acting personally or through his examiners, regular or special.

History: En. Sec. 56, Ch. 89, L. 1927; amd. Sec. 45, Ch. 177, L. 1965.

Cross-Reference

Bonds of state officers and employees, sec. 6-105 et seq.

5-603. (6014.61) **State superintendent of banks—employees.** The superintendent of banks shall have the power and authority with the approval of the governor to appoint such clerk and examiners, both regular and special, one of whom may be designated chief examiner, as may be necessary for the proper transaction of the business of the department. The examiners shall qualify by taking the oath of office required of other state officers and be commissioned by the superintendent of banks as such examiners.

History: En. Sec. 57, Ch. 89, L. 1927; amd. Sec. 13, Ch. 177, L. 1965.

Cross-Reference

Bonds of state officers and employees, sec. 6-105 et seq.

5-604. (6014.62) **Superintendent of banks and employees not to be interested in banks.** Neither the superintendent of banks nor any bank examiner shall be interested in or a borrower from any state bank, directly or indirectly.

History: En. Sec. 58, Ch. 89, L. 1927.

5-605. (6014.63) **Repealed—Chapter 129, Laws of 1963.**

Repeal

This section (Sec. 59, Ch. 89, L. 1927), relating to the salaries of the superintendent of banks and of the clerks and bank examiners appointed by him, was repealed by Sec. 1, Ch. 129, Laws 1963.

5-606. (6014.64) **Payment of expenses of superintendent.** The necessary traveling and living expenses of the superintendent of banks and the

members of his staff incurred in the discharge of their duties when away from headquarters shall be borne by the state of Montana, and paid for from the appropriation made for the maintenance of the department. The superintendent of banks is authorized to attend the Montana Bankers Association, and shall be entitled to receive from the state of Montana his necessary traveling and living expenses incurred in such attendance.

History: En. Sec. 60, Ch. 89, L. 1927.

CHAPTER 7

BANK REPORTS AND SUPERVISION

Section 5-701. Report to superintendent of banks.
5-702. Report of declaration of dividend.
5-703. Special reports to superintendent of banks.
5-704. Superintendent to call for reports.
5-705. Reports confidential—false reports—penalties.
5-706. Penalty for failure to make report within five days.
5-707. False statements and entries deemed felony.

5-701. (6014.65) **Report to superintendent of banks.** Every bank shall make to the superintendent of banks regular call reports according to the form which may be prescribed by him, verified by oath or affirmation of the president, vice-president or cashier of such bank and attested by the signature of at least two (2) of the directors other than the subscribing officer. Each such report shall exhibit in detail, and under appropriate schedules, the resources and liabilities of the bank at the close of business on any past day by him specified; and shall be transmitted to the superintendent of banks within five (5) days after the receipt of a request or requisition therefor from him, and in such form as may be required by the superintendent of banks, it shall be published as soon as possible in a newspaper published in the place where such bank is established, or, if there be no newspaper in the place, then in one published nearest thereto in the same county, at the expense of the bank; and such proof of the publication shall be furnished at such times and in such manner as may be required by the superintendent of banks.

History: En. Sec. 61, Ch. 89, L. 1927.

9 C.J.S. Banks and Banking § 36.
10 Am. Jur. 2d 44, Banks, § 18.

Collateral References
Banks and Banking⊂⇒16.

5-702. (6014.66) **Report of declaration of dividend.** In addition to the statement required by the preceding section, every such bank shall report to the superintendent of banks within ten (10) days after declaring any dividend, showing the amount of such dividend and the amount of net earnings in excess of the dividend. Such statement shall be attested as provided for in the attestation of statement by the preceding section.

History: En. Sec. 62, Ch. 89, L. 1927.

5-703. (6014.67) **Special reports to superintendent of banks.** In addition to the information obtained from the report required by the provisions of section 5-701 of this code, the superintendent of banks shall also have the power to require any bank to furnish a special report in writing, verified as

required by section 5-701 of this code, whenever in his judgment such special report is necessary to inform him fully of the actual financial condition and affairs of such bank. Any willful false statement in the premises shall be perjury, and shall be punished as such.

History: En. Sec. 63, Ch. 89, L. 1927.

5-704. (6014.68) **Superintendent to call for reports.** The superintendent of banks shall call for the reports specified in section 5-701 of this code at least three (3) times each year. The "past day specified" by the superintendent of banks, under the provisions of said section, shall be on the day designated by the comptroller of currency of the United States for reports of National Banking Associations.

History: En. Sec. 64, Ch. 89, L. 1927.

5-705. (6014.69) **Reports confidential — false reports — penalties.** The report and any information contained in the reports and statements hereinabove provided for, other than such reports as are required to be published, shall be deemed to be secret and for the confidential information of the superintendent of banks only, and such information shall not be imparted to any persons who are not officially associated in and with the office of the superintendent of banks, and the information therein contained shall be used by the superintendent of banks only in the furtherance of his official duties, except that it shall be lawful for the department to exchange information with the federal banking department and with departments of other states and to furnish information to prosecuting officials who request the same for use in pursuit of official duties. Any superintendent of banks or deputy, assistant, examiner, or clerk in his employ, who violates any of the provisions of this section, or willfully makes a false official report as to the condition of any bank, shall be removed from office, and shall also be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine of not exceeding one thousand dollars ($1,000.00), or by imprisonment in the state penitentiary for not exceeding five (5) years, or by both such fine and imprisonment.

History: En. Sec. 65, Ch. 89, L. 1927.

References

Conley v. Johnson, 101 M 376, 400, 54 P 2d 585.

Collateral References

Banks and Banking⇐16, 20.
9 C.J.S. Banks and Banking §§ 36, 39.
10 Am. Jur. 2d 211, Banks, § 234 et seq.

Abatement upon death, of cause of action to enforce personal liability of corporate officer, director or trustee, because of failure to file reports or making false reports. 79 ALR 1517, 1524.

Criminal offense of making false statement or report as to assets or condition of bank. 85 ALR 824.

Construction and application of statutes relating to civil liability of directors, officers or employees of bank, in case of false reports or statements. 114 ALR 472.

5-706. (6014.70) **Penalty for failure to make report within five days.** If any bank neglects to make out or transmit the statements required by this act, within five (5) days after call, it shall be subject to a penalty of twenty dollars ($20.00) for each day in default after the period respectively required by this act that it may delay to make and transmit any such statements. Should any bank delay for a period of one (1) month to make out and transmit the statements and proofs of publication required by this

act, beyond the period when the same is required to be made, or willfully violate any of the provisions of this act with reference to said statements and reports, the directors shall be personally responsible for all the debts of such corporation contracted previous to and during the period of such neglect.

History: En. Sec. 66, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐19.
9 C.J.S. Banks and Banking § 38.

5-707. (6014.71) **False statements and entries deemed felony.** Every officer or other person authorized by this act, who willfully and knowingly makes any false statement of facts, statement of account, or report, and every officer, agent, or clerk of any bank who willfully and knowingly makes any false entries in the books of such bank, or knowingly subscribes or exhibits false papers, with the intent to deceive any person authorized to examine such bank, and every person authorized by the provisions of this act to make statements or reports, who willfully and knowingly subscribes or makes any false statement or report, shall be deemed guilty of a felony, and, upon conviction thereof, shall be imprisoned at hard labor in the state prison for a term of not less than one (1) nor more than ten (10) years.

History: En. Sec. 67, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐20, 61.
9 C.J.S. Banks and Banking §§ 39, 148-154.
10 Am. Jur. 2d 211, Banks, § 234 et seq.

Abatement upon death, of cause of action to enforce personal liability of corporate officer, director or trustee, because of failure to file reports or making false reports. 79 ALR 1517, 1524.

Criminal offense of making false statement or report as to assets or condition of bank. 85 ALR 824.

Construction and application of statutes relating to civil liability of directors, officers or employees of bank, in case of false reports or statements. 114 ALR 472.

CHAPTER 8

IMPAIRMENT OF CAPITAL—INSOLVENCY

Section 5-801. Assessment on capital stock to make good impairment.
5-802. Penalty for receiving deposits when insolvent, or making false statements.
5-803. Deposits in insolvent bank.

5-801. (6014.72) **Assessment on capital stock to make good impairment.** Whenever the superintendent of banks shall determine that an impairment of capital exists in any bank, he may in his discretion notify the board of directors of such bank by written notice that such impairment exists, stating the amount thereof in dollars and percentage of the capital stock thereof, and he may if he deems it advisable, order such board to make good such impairment within ninety (90) days from date of such notice.

1. The board of directors shall, upon receipt of notice, convene and pass a resolution reciting the receipt of such notice of impairment and calling a special meeting of the stockholders of the bank for a day certain in the manner provided in their bylaws.

2. The stockholders, when assembled as herein provided, shall pass a resolution reciting the facts of receipt of notice from the superintendent, notice of impairment and notice of meeting, and assessing themselves by

assessing the stock of record, payment of which assessment must be made within the time limit specified by the superintendent of banks as provided in notice of impairment.

3. If there be any stock remaining on which the assessment is not paid as hereinabove provided, the same or such part thereof as is necessary to pay the assessment shall be sold by the board of directors, acting through the cashier or secretary thereof, at public or private sale, as appears best for all concerned, on a day certain, not less than thirty (30) days after the day fixed for payment of assessment hereinabove provided, notice of time and place of which sale shall be given by registered mail to the stockholders by the board through its cashier or secretary at least ten (10) days prior to the date thereof, and such sales of stock as herein provided for shall effect an absolute cancellation of the outstanding certificate or certificates evidencing the stock so sold, and shall make the same null and void in the hands of the stockholders, his assigns or pledgees, and a new certificate shall be issued by the bank to the purchaser thereof, for the number of shares purchased, and a new certificate issued to the stockholder of record and delivered to him or any pledgee or assignee thereof for the remaining shares, if any, and the record of the original certificate sold shall be marked canceled on the books of the bank and such record thereof shall be prima facie evidence of the regularity of the proceedings for the sale of said stock.

4. If any bank fails to make good its capital impairment upon demand of the superintendent of banks, as provided herein, the superintendent of banks may forthwith take charge of such bank and proceed to liquidate its as in case of insolvency.

If the said stock does not sell for sufficient to pay the assessment thereon, the board of directors may proceed by suit in the name of the corporation to collect the deficiency from the record holder, whose stock has been thus sold for the assessment.

History: En. Sec. 68, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐47, 63½, 293, 309, 313, 317.

9 C.J.S. Banks and Banking §§ 87-107, 123-130, 422-447, 449-465, 965, 966, 1028-1031, 1033-1037, 1039, 1040, 1042, 1048, 1067-1069, 1071, 1073.

10 Am. Jur. 2d 716, Banks, § 754 et seq.

Statute relating to closing of bank and assessment of stockholders as subject to constitutional objection of conferring judicial power upon administrative or executive officers. 78 ALR 774.

Constitutionality, construction and effect of legislation for protection of bank depositors or relief of banks or building and loan associations in need of cash or cash resources. 82 ALR 1025.

Consideration for note or other obligation given to make good depletion of capital or assets of bank. 95 ALR 534.

5-802. (6014.73) **Penalty for receiving deposits when insolvent, or making false statements.** Any officer, agent, or clerk of any bank, knowing such bank to be insolvent, who receives money, bank bills, notes of the United States, or currency, or other bills or drafts circulating as money or currency, except in the manner set forth in the succeeding section, or who subscribes or makes any false statements or entries in the books of such bank, or knowingly subscribes or exhibits any false paper with the intent to deceive any person authorized to examine as to the condition of such

bank, or willfully subscribes or makes false reports, shall be subject to imprisonment at hard labor in the state prison for a term not exceeding five (5) years.

History: En. Sec. 69, Ch. 89, L. 1927.

Cross-Reference

Members of copartnership or association receiving deposits while insolvent or making false entries, penalty, sec. 5-1014.

Collateral References

Banks and Banking⇐84, 85, 309, 317.

9 C.J.S. Banks and Banking §§ 155, 156, 1028-1031, 1033, 1037, 1039, 1040, 1042, 1067-1069, 1071-1073.

Constitutionality of statute regarding conduct of officers or directors of insolvent corporation which will render them criminally responsible. 76 ALR 530.

What amounts to a deposit within statute in relation to civil or criminal liability for accepting deposit when bank is unsafe or insolvent. 76 ALR 1320.

When bank deemed insolvent within meaning of statute. 81 ALR 1160.

Civil liability of bank officer or director permitting deposit after insolvency of bank. 87 ALR 1402.

Personal liability of directors, officers, or employees of bank interfering with payment of checks or otherwise preventing or discouraging withdrawal of deposits. 97 ALR 315.

Negligence in failing to discover insolvency of bank as equivalent of knowledge, or substitute therefor, as regards criminal responsibility of bank officer or employee for receiving deposit after insolvency. 98 ALR 615.

5-803. (6014.74) **Deposits in insolvent bank.** Except as otherwise provided by the Uniform Commercial Code: Whenever any bank shall be insolvent in the manner described and set forth in this act, such bank shall not accept or receive on deposit any money, bank bills, or notes, United States treasury notes or currency, or other notes, bills or drafts circulating as money or currency, or transact any other business in connection with its operations, except as trustee for the depositors and parties transacting business with them, and it or they shall keep all such deposits of money, bills or notes, or United States treasury notes or currency, or other notes, bills, or drafts circulating as money or currency, separate and apart from the general assets of the bank, from and after the date of the accrual of such insolvency, and when such impairment or insolvency has been made good, such deposits received in trust may be transferred to the general assets of the bank on and by written consent of the superintendent of banks; provided, that in the event such insolvency be not made good then any and all such trust deposits shall be returned to the depositors making them; provided, further, that any officer, director, cashier, manager, member, partner or managing partner thereof, who shall knowingly accept or receive, be accessory to or permit or connive at the receiving or accepting of such trust deposits, except in the manner hereinbefore set forth in this section, shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by a fine not exceeding ten thousand dollars ($10,000.00), or imprisonment in the state prison not exceeding five (5) years, or by both fine and imprisonment as aforesaid.

History: En. Sec. 70, Ch. 89, L. 1927; amd. Sec. 11-102, Ch. 264, L. 1963.

Collateral References

Banks and Banking⇐73-77, 84, 85, 309, 317.

9 C.J.S. Banks and Banking §§ 155, 156, 486-490, 505, 1028-1031, 1033-1037, 1039, 1040, 1042, 1067-1069, 1071-1073.

CHAPTER 9

EXAMINATION AND SUPERVISION—STATE EXAMINER'S FUND

Section 5-901. Examination and supervision.
5-902. Reports and records of superintendent.
5-903. State examiner's fund.
5-904. Payments by counties.
5-905. Payments by cities and towns.
5-906. Payments by county free high schools.
5-907. Payments by irrigation districts.
5-908. Payments by banks, investment and trust companies.
5-909. Payments by building and loan associations.
5-910. Special examinations and fees.

5-901. (6014.75) **Examination and supervision.** The superintendent of banks shall exercise a constant supervision, either personal or through the examiners herein provided for, over the books and affairs of all banks doing business within the state of Montana; and shall, through the examiners, visit, at least once a year, each of said banks, and verify the assets and liabilities of each, and so far investigate the character and value of the assets of each as to ascertain with reasonable certainty that the values are correctly carried on the books. He shall further investigate the methods of operation and conduct of business of said banks and their systems of accounting, to ascertain whether such methods and systems are in accordance with law and sound banking principles. He may examine, or cause to be examined by the examiners, on oath, any of the officers, directors, agents, clerks, customers, or depositors of any bank touching the affairs and business thereof, and may, in the performance of his official duties, issue, or cause to be issued by himself or the examiners subpoenas, and administer, or cause to be administered by the examiners, oaths; provided, that in case of any refusal to obey any subpoena issued by him or under his direction, such refusal may at once be reported to the district court of the district in which the bank is located, and such court shall enforce obedience to such subpoena in the manner provided by law for enforcing obedience to the process of said court. In all matters relating to his official duties, the superintendent of banks shall have the same power possessed by courts of law to issue subpoenas, and cause them to be served and enforced, and all officers, directors, agents and employees of banks doing business under the provisions of this act, and all persons having dealings with or knowledge of the affairs or methods of any such institution, shall at all times afford reasonable facilities for such examinations, and make such returns, and reports to the superintendent of banks as he may require; attend and answer under oath his lawful inquiries, produce and exhibit such books, accounts, documents and property as he may desire to inspect, and in all things aid him in the performance of his duty.

History: En. Sec. 71, Ch. 89, L. 1927.

NOTE.—Section 82-1002 requires state examiner to visit banks twice a year.

Collateral References

Banks and Banking⇐17.

9 C.J.S. Banks and Banking § 35.

10 Am. Jur. 2d 44, Banks, § 18.

Examination and supervision of banks by public officers as impairment of charter rights. 8 ALR 898.

Reports of, or information obtained by, bank examiners as confidential. 123 ALR 1278.

Constitutionality, construction, and effect of statute or departmental regulation relating specifically to divulgence of information acquired by public officers or employees. 165 ALR 1302.

5-902. (6014.76) **Reports and records of superintendent.** The superintendent of banks shall keep all proper records and files pertaining to the duties and work of his office, and shall report to the governor annually touching all of his official acts, giving abstract of statistics and the condition of the affairs of all banks to which his duties relate, and make such recommendations and suggestions as he may deem proper, which report may be printed and bound in a satisfactory and substantial manner, and distributed among the banks doing business under the provisions of this act.

History: En. Sec. 72, Ch. 89, L. 1927.

5-903. (6014.77) **State examiner's fund.** For the purpose of a just distribution of the expense incurred by the department of the state examiner, all moneys collected under the provisions of the following sections shall be credited to the general fund of the state, except as otherwise provided herein.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929.

Collateral References

Banks and Banking⇐17; States⇐127.
9 C.J.S. Banks and Banking § 35.

5-904. (6014.78) **Payments by counties.** For the credit of the state general fund each county of the state, shall pay to the state treasurer on or before the first day of July of each year, according to its taxable valuation for the preceding year as follows:

Counties having a taxable valuation of five million dollars ($5,000,000) or less, shall pay one hundred dollars ($100.00) for each one million dollars ($1,000,000) of taxable valuation, or fraction thereof;

Counties having a taxable valuation of more than five million dollars ($5,000,000), but less then twenty million dollars ($20,000,000), shall pay five hundred dollars ($500.00), plus seventy-five dollars ($75.00), for each one million dollars ($1,000,000) of taxable valuation in excess of five million dollars ($5,000,000) or fraction thereof;

Counties having a taxable valuation of more than twenty million dollars ($20,000,000), but less than forty million dollars ($40,000,000), shall pay sixteen hundred twenty-five dollars ($1625.00) plus fifty dollars ($50.00) for each one million dollars ($1,000,000) of taxable valuation in excess of twenty million dollars ($20,000,000) or fraction thereof;

Counties having a taxable valuation in excess of forty million dollars ($40,000,000) shall pay twenty-six hundred twenty-five dollars ($2625.00) plus twenty-five dollars ($25.00) for each one million dollars ($1,000,000) of taxable valuation in excess of forty million dollars ($40,000,000) or fraction thereof;

The minimum payment hereunder for any one county shall be three hundred fifty dollars ($350.00).

The fees as prescribed shall be paid to the state treasurer regardless of whether or not the state examiner has made an examination of a county within the calendar year in which the fee is payable.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 49, L. 1953; amd. Sec. 1, Ch. 186, L. 1959.

Collateral References
Banks and Banking⇨4, 5.
9 C.J.S. Banks and Banking § 6.

5-905. (6014.79) **Payments by cities and towns.** For the credit of such fund each city and town of the state shall pay to the state treasurer on or before the first day of July of each year, according to its taxable valuation for the preceding year, as follows:

Cities and towns having a taxable valuation of fifty thousand dollars ($50,000) or less, fifty dollars ($50);

Cities and towns having a taxable valuation of from fifty thousand dollars ($50,000) to one hundred thousand dollars ($100,000), sixty-five dollars ($65);

Cities and towns having a taxable valuation of from one hundred thousand dollars ($100,000) to two hundred thousand dollars ($200,000), eighty dollars ($80);

Cities and towns having a taxable valuation of from two hundred thousand dollars ($200,000) to four hundred thousand dollars ($400,000), one hundred five dollars ($105);

Cities and towns having a taxable valuation of from four hundred thousand dollars ($400,000) to six hundred thousand dollars ($600,000), one hundred thirty dollars ($130);

Cities and towns having a taxable valuation of from six hundred thousand dollars ($600,000) to eight hundred thousand dollars ($800,000), one hundred sixty dollars ($160);

Cities and towns having a taxable valuation of from eight hundred thousand dollars ($800,000) to one million dollars ($1,000,000), two hundred dollars ($200);

Cities and towns having a taxable valuation of from one million dollars ($1,000,000) to one million two hundred fifty thousand dollars ($1,250,000), two hundred forty dollars ($240);

Cities and towns having a taxable valuation of from one million two hundred fifty thousand dollars ($1,250,000) to one million five hundred thousand dollars ($1,500,000), three hundred twenty dollars ($320);

Cities and towns having a taxable valuation of from one million five hundred thousand dollars ($1,500,000) to two million dollars ($2,000,000), four hundred dollars ($400);

Cities and towns having a taxable valuation of from two million dollars ($2,000,000) to three million dollars ($3,000,000), four hundred eighty dollars ($480);

Cities and towns having a taxable valuation of from three million dollars ($3,000,000) to four million dollars ($4,000,000), five hundred sixty dollars ($560);

Cities and towns having a taxable valuation of from four million dollars ($4,000,000) to five million dollars ($5,000,000), six hundred forty dollars ($640);

Cities and towns having a taxable valuation of more than five million dollars ($5,000,000), shall pay six hundred forty dollars ($640) plus fifty dollars ($50) for each million dollars of taxable valuation or fraction thereof in excess of five million dollars ($5,000,000);

The said fees as prescribed shall be paid to the state treasurer regardless of whether or not the state examiner has made an examination of a city or town within the calendar year in which the fee is payable.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 48, L. 1953; amd. Sec. 1, Ch. 138, L. 1959.

Collateral References
Municipal Corporations⇐881.

5-906. (6014.80) **Payments by county free high schools.** For the credit of the state general fund, each county free high school shall pay to the state treasurer on or before the first day of July of each year a fee according to the following rates:

County free high schools having a maximum attendance record as shown in the records of the office of the state superintendent of public instruction, according to the following schedule:

All county free high schools having an attendance of two hundred (200) or less, sixty dollars ($60);

All county free high schools having an attendance of in excess of two hundred (200) and not exceeding three hundred (300), seventy-five dollars ($75);

All county free high schools having an attendance in excess of three hundred (300) and not exceeding four hundred (400), one hundred dollars ($100);

All county free high schools having an attendance in excess of four hundred (400) and not exceeding six hundred (600), one hundred twenty-five dollars ($125);

All county free high schools having an attendance in excess of six hundred (600) and not exceeding one thousand (1000), one hundred fifty dollars ($150);

All county free high schools having an attendance in excess of one thousand (1000) and not exceeding fifteen hundred (1500), two hundred dollars ($200);

All county free high schools having an attendance in excess of fifteen hundred (1500), three hundred dollars ($300).

The fees as prescribed shall be paid to the state treasurer regardless of whether or not the state examiner has made an examination of a county free high school within the calendar year in which the fee is payable.

That the fees for examining auxiliary funds of a county free high school, when requested by the trustees of the said high school, or deemed necessary by the state examiner, shall be based on the fees as set forth in section 5-910.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 50, L. 1953; amd. Sec. 1, Ch. 139, L. 1959.

Collateral References
Schools and School Districts⇐92 (1).

5-907. (6014.81) **Payments by irrigation districts.** For the credit of said fund, each irrigation district under the supervision of the state examiner, shall pay to the state treasurer, within sixty (60) days from the date of examination, the following amounts as charges for such examinations, to be computed by the state examiner: For each day spent in the examination of books and records of any irrigation district by the state examiner or his representative, a charge of sixty dollars ($60.00) shall be made; and, for any fraction of a day spent in the examination of any irrigation district's books and records, a charge of seven and one-half dollars ($7.50) per hour shall be made. It shall be the duty of the state examiner, or his representative, to notify the secretaries of such districts of the time of presenting the books and records at the courthouse for examination.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 195, L. 1945; amd. Sec. 1, Ch. 159, L. 1959.

5-908. (6014.82) **Payments by banks, investment and trust companies.** For the credit of said fund, each bank, trust company or investment company, under the supervision of the superintendent of banks, shall pay to the state treasurer, on or before the first day of July of each year, a fee, based upon its total assets as shown by the statement to the superintendent of banks on the last call report of the preceding year, according to the following rates:

The minimum fee for the examination of any bank, trust company or investment company shall be the sum of three hundred dollars ($300);

For the first five million dollars ($5,000,000) of assets, a charge of fifteen cents (15¢) for each one thousand dollars ($1,000) of assets shall be made;

For the second five million dollars ($5,000,000) of assets, a charge of ten cents (10¢) for each one thousand dollars ($1,000) of assets shall be made;

For assets in excess of ten million dollars ($10,000,000) but not exceeding twenty million dollars ($20,000,000), a charge of five cents (5¢) for each one thousand dollars ($1,000) of assets shall be made;

For assets in excess of twenty million dollars ($20,000,000) but not exceeding thirty million dollars ($30,000,000), a charge of three cents (3¢) for each one thousand dollars ($1,000) of assets shall be made;

For all assets in excess of thirty million dollars ($30,000,000), a charge of two cents (2¢) for each one thousand dollars ($1,000) of assets shall be made.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 59, L. 1953; amd. Sec. 1, Ch. 141, L. 1959.

Collateral References

Banks and Banking⇐12.
9 C.J.S. Banks and Banking § 8.

5-909. (6014.83) **Payments by building and loan associations.** For the credit of said fund, each building and loan association under the supervision of the superintendent of banks, shall pay to the state treasurer, on or before the first day of July each year, a fee based upon the total assets of such association as shown by its last annual statement and upon the following rates:

The minimum fee to be paid by any building and loan association shall be the sum of one hundred dollars ($100);

For the first five million dollars ($5,000,000) of assets, a charge of fifteen cents (15¢) for each one thousand dollars ($1,000) of assets shall be made;

For the second five million dollars ($5,000,000) of assets, a charge of ten cents (10¢) for each one thousand dollars ($1,000) of assets shall be made;

For assets in excess of ten million dollars ($10,000,000) but not exceeding twenty million dollars ($20,000,000), a charge of five cents (5¢) for each one thousand dollars ($1,000) of assets shall be made;

For assets in excess of twenty million dollars ($20,000,000) but not exceeding thirty million dollars ($30,000,000), a charge of three cents (3¢) for each one thousand dollars ($1,000) of assets shall be made;

For all assets in excess of thirty million dollars ($30,000,000) a charge of two cents (2¢) for each one thousand dollars ($1,000) of assets shall be made.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 114, L. 1959.

Collateral References

Building and Loan Associations⇨24.
12 C.J.S. Building and Loan Associations § 49 et seq.

5-910. (6014.84) **Special examinations and fees.** Special examinations may be made of any county, city, town, school district, irrigation district, high school, bank, building and loan association, credit union or any other county or municipal office, board or commission, whether temporary or permanent, however created, and for whatever purpose, having the control, management, collection or disbursement of any public money of any character or description, when in the judgment of the state examiner it shall be deemed necessary, and such special examination shall be charged for at the rate of sixty dollars ($60.00) a day for each person engaged in the examination. All special examination fees or charges so collected by the state examiner and ex officio superintendent of banks and paid to the state treasurer, except those collected from state agencies, shall be placed in the earmarked revenue fund to be drawn upon by the state examiner and ex officio superintendent of banks to defray the actual costs and expenses of such special examinations, but all moneys remaining at the end of each current year shall be transferred by the state treasurer to the general fund.

In any case where the current examination shall not have been made prior to the first day of July of any year, the above fees enumerated in sections 5-904, 5-905, 5-906, 5-907, 5-908 and 5-909 must be paid as herein specified, provided, however, that all examinations shall cover the entire period from the date of the last examination.

History: En. Sec. 2, Ch. 167, L. 1929; amd. Sec. 1, Ch. 58, L. 1953; amd. Sec. 1, Ch. 137, L. 1955; amd. Sec. 1, Ch. 180, L. 1959; amd. Sec. 222, Ch. 147, L. 1963; amd. Sec. 22, Ch. 249, L. 1967.

Collateral References

Banks and Banking⇨16.
9 C.J.S. Banks and Banking § 36.

CHAPTER 10

GENERAL POWERS AND LIMITATIONS OF BANKS

Section 5-1001. Acceptance and issuance of drafts and letters of credit.
5-1002. Change from state to national bank.
5-1003. Surrender of charter by state bank.
5-1004. Reduction of capital stock.
5-1005. Certificate of change to national bank.
5-1006. Reorganization of national bank as state bank.
5-1007. Repealed.
5-1008. Repealed.
5-1009. Unincorporated banks—designation of name.
5-1010. Financial condition required of unincorporated bank.
5-1011. Private banks subject to inspection by state examiner.
5-1012. Information obtained by state examiner to be deemed confidential—penalty for the violation thereof.
5-1013. Report of private bank.
5-1014. Receiving deposits by insolvent bank—making false entries.
5-1015. Bank insolvent when.
5-1016. Repealed.
5-1017. Repealed.
5-1018. Superintendent to make rules and regulations.
5-1019. Special examination defined.
5-1020. Examination at request of directors.
5-1021. Consolidation of banks.
5-1022. Taxes on banks which have ceased to do business as banks.
5-1023. Attachments prohibited.
5-1024. Conversion of surplus and undivided profits to capital.
5-1025. Superintendent to examine trusts.
5-1026. Extent assets may be pledged.
5-1027. Superintendent may make rules.
5-1028. Branch bank prohibited—exceptions.
5-1029. Past due and doubtful paper.
5-1030. Reserve—reports on.
5-1031. Payment to foreign administrator.
5-1032. Bonding of employees.
5-1033. Corporate existence—ceases when.
5-1034. Bank advertising before issuance of charter.
5-1035. Right of examination by stockholder.
5-1036. Removal of directors, officers, or employees.
5-1037. Borrowing money—limitations.
5-1038. No certificate of deposit to issue for borrowed money.
5-1039. Giving security for deposit prohibited—exceptions.
5-1040. Penalty for unlawful hypothecation of property received.
5-1041. Concealment of loans and discounts.
5-1042. Transaction on holidays.
5-1043. Repealed.
5-1044. Embezzlement.
5-1045. False statement to obtain loan.
5-1046. Persons previously convicted under banking laws—bank employment.
5-1047 to 5-1049. Repealed.
5-1050. Bank records—when destruction permitted.
5-1051. Photographic or microfilm reproduction of banks records—admissibility in evidence.
5-1052. Admissibility of photographic copies in evidence — exception when original available.
5-1053. Destruction or reproduction "in regular course of business" defined.
5-1054. Application of preceding sections.
5-1055. Closing on Saturdays authorized—Saturday treated as holiday.
5-1056. Amendment of bylaws to permit Saturday closing—notice.
5-1057. Interest payable at bank on such Saturday may be paid next succeeding business day.

5-1001. Acceptance and issuance of drafts and letters of credit. Every bank organized and existing under the laws of Montana, shall have

power and authority to accept for payment at a future date, drafts drawn upon it, by its customers, and to issue letters of credit, authorizing holders thereof to draw drafts upon it, or its correspondents at sight or on time, provided that the total amount of drafts so accepted or letters of credit so issued for any one person, firm or corporation, shall not at any one time exceed twenty per cent (20%) of the capital and surplus of the accepting or issuing bank.

History: En. Sec. 74, Ch. 89, L. 1927; amd. Sec. 11-103, Ch. 264, L. 1963.

Cross-Reference

Letters of credit, secs. 87A-5-101 to 87A-5-117.

Collateral References

Banks and Banking⇐189, 191.

9 C.J.S. Banks and Banking §§ 173, 175, 183.

Authority of officer or agent to bind bank as guarantor or surety. 34 ALR 2d 299.

Authority of officer or agent of bank to indorse and transfer commercial paper. 37 ALR 2d 505.

5-1002. (6014.86) **Change from state to national bank.** Any bank may become a corporation for the purpose of carrying on the business of banking within this state, pursuant to the provisions of the act of Congress "to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864, and of Title 52 of the Revised Statutes of the United States, whenever stockholders owning two-thirds (2/3) of the stock of such bank shall have voted to become such corporation, or have executed a written consent authorizing its directors to make the certificate required therefor by the laws of the United States, or whenever a majority of the directors of such bank, having been authorized in their discretion to make the change, shall, by a vote of such majority, decide to become such corporation; and the cashier of such bank shall publish notice thereof for thirty (30) days in such newspaper as the directors may select, and send a like printed notice by mail or otherwise to all nonvoting or dissenting stockholders, and notify the state bank examiner of this state that such bank has decided to become a corporation under the laws of the United States.

History: En. Sec. 75, Ch. 89, L. 1927.

Compiler's Note

Act of Congress approved June 3, 1864, referred to in this section, is compiled in the United States Code as Tit. 12, secs. 21-24, 26-29, 35-37, 39, 51, 52, 53, 55, 57, 59-62, 66, 71, 72-76, 81-91, 93, 94, 101a, 102, 104, 107-110, 123, 124, 131-138, 141-144, 151, 152, 161, 164, 168-175, 181-186, 192-196, 481-485, 501, 541, 544-548, and 582.

Cross-Reference

Assessment of national banks, sec. 84-306.

Collateral References

Banks and Banking⇐237.
9 C.J.S. Banks and Banking § 738.

5-1003. (6014.87) **Surrender of charter by state bank.** Any such bank, which will become a corporation for carrying on the business of banking under the laws of the United States, shall cease to be a corporation under the laws of this state, except that for the term of three (3) years thereafter its corporate existence shall be deemed to continue for the purposes of prosecuting and defending suits by and against it, and of enabling it to close its concerns, and to dispose of and convey its property.

The members of the board of directors last in office, when such corporation shall have become a corporation under the laws of the United States, shall continue to be the board of directors of the corporation, with power to take all necessary measures to carry out and perfect such organization, by signing the articles of association and the organization certificate, and adopting such regulations as may be just and proper and not inconsistent with the acts of Congress in relation thereto. Such change from a state to a national bank corporation shall not release any such bank from its obligations to pay and discharge all the liabilities created by law or incurred by it before becoming a national bank corporation, or any tax imposed by the laws of this state up to the date of its becoming such national bank corporation, in proportion to the time which has elapsed since the next preceding payment thereof.

History: En. Sec. 76, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐66, 237.
9 C.J.S. Banks and Banking §§ 467, 738.

5-1004. (6014.88) **Reduction of capital stock.** The directors of such new corporation may reduce the capital stock of the bank to its par value by dividing the surplus among its stockholders, or may retain such portion of such surplus as they may deem necessary; and in case of an increase of the capital stock under the provisions of the acts of Congress, may charge the shares of such increased capital stock with a like amount, to place the whole of such capital stock on an equality; and may award such new stock, or such proportion or fractional parts thereof, to such persons as they shall determine are entitled thereto, and as are provided in their articles of association and the acts of Congress; but new directors may be chosen at such time and in the manner provided in the articles of association and the acts of Congress.

History: En. Sec. 77, Ch. 89, L. 1927.

5-1005. (6014.89) **Certificate of change to national bank.** When any such bank has decided to become a corporation under the laws of the United States, the directors shall immediately thereafter execute and transmit to the comptroller of the currency the proper certificate and other instruments for its conversion into a national bank corporation under the laws of the United States. When any such bank shall have become authorized to commence the business of banking under the laws of the United States, all the property of such bank shall immediately, by act of law, and without any conveyance or transfer, be vested in and become the property of the national bank corporation, into which such bank shall have been converted.

History: En. Sec. 78, Ch. 89, L. 1927.

5-1006. (6014.90) **Reorganization of national bank as state bank.** Any national bank authorized to dissolve, and which shall have taken the necessary steps to effect dissolution, may reorganize as a state bank upon the consent in writing of the owners of two-thirds of the capital stock of such bank, and with the approval of the state superintendent of banks. The stockholders shall make, execute, and acknowledge articles of incorpora-

tion as required by the laws of the state of Montana, and shall set forth therein the said written consent of such stockholders. Upon the filing of said articles as provided by law, and upon the approval of the superintendent of banks, such bank shall be deemed to be reorganized under this act, and thereupon all assets, real and personal, of such dissolved national bank shall be vested in and become the property of such reorganized state bank, subject to all liabilities of such national bank not liquidated before such reorganization.

History: En. Sec. 79, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐282.
9 C.J.S. Banks and Banking § 736.

5-1007, 5-1008. (6014.91, 6014.92) **Repealed—Chapter 264, Laws of 1963.**

Repeal

These sections (Secs. 80, 81, Ch. 89, L. 1927), relating to the liability of banks paying forged checks, and to checks delayed in presentment, were repealed by Sec. 10-102, Ch. 264, Laws 1963.

5-1009. (6014.93) **Unincorporated banks — designation of name.** It shall be unlawful for any person or persons in anywise to conduct a commercial banking business, or a banking business of discount and deposit, within the state of Montana, in the capacity of an individual or of a copartnership or of an unincorporated association, unless the name under which such bank is known and conducted shall contain the name of such individual, or the name of at least one actual and responsible member of such copartnership or association, in addition to which name there shall be no other designation than the words "bank of," "banking house of," "banker," or "bankers." Nothing in this section shall apply to any person, firm or association now conducting a private banking business in this state, which bank is now authorized by the state banking department to do a banking business.

History: En. Sec. 82, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐31.
9 C.J.S. Banks and Banking § 53.

5-1010. (6014.94) **Financial condition required of unincorporated bank.** Every such individual, copartnership, or association intending to conduct such bank or banking business within the state of Montana, shall, before the receipt of any money whatsoever on deposit, actually own and possess, within the state of Montana, approved property or assets not exempt from execution of the minimum value of not less than twenty thousand dollars ($20,000.00); in cities and towns having a population of over two thousand (2,000) and less than five thousand (5,000), the sum of thirty thousand dollars ($30,000.00); in cities having a population of five thousand (5,000) and less than ten thousand (10,000), the sum of fifty thousand dollars ($50,000.00); in cities having ten thousand (10,000) population and less than twenty-five thousand (25,000) the sum of seventy-five thousand dollars ($75,000.00); in all cities having a population of twenty-five thousand (25,000) or over, the sum of one hundred thousand dollars ($100,000.00); which financial condition must appear and be carried on the books of any such bank or banks. Such requirement shall ex-

tend and be applicable separately to each and every private bank conducted by any person, copartnership, or association, and no asset or assets shall appear on the books of more than one bank.

History: En. Sec. 83, Ch. 89, L. 1927.

Collateral References
Banks and Banking⇐36.
9 C.J.S. Banks and Banking § 58.

5-1011. (6014.95) **Private banks subject to inspection by state examiner.** Every private bank, corporation, or association, conducting a banking business within the state of Montana, operating under the foregoing provisions, shall be subject to examination and visitations of the state examiner once each year, and oftener when deemed necessary by said examiner, who shall have full power and authority to investigate and examine all books, papers, and effects of any such bank or banking house for the purpose of ascertaining the financial condition of any such bank or banks, and shall have the power in aid thereof to administer oaths to any person or persons, or the agent or employees of any person or persons conducting such bank or banking business.

History: En. Sec. 84, Ch. 89, L. 1927.

Collateral References
Banks and Banking⇐17.
9 C.J.S. Banks and Banking § 35.

5-1012. (6014.96) **Information obtained by state examiner to be deemed confidential—penalty for the violation thereof.** Any knowledge or information gained or discovered by the state superintendent of banks, in pursuance of his powers or duties as herein prescribed, shall be deemed confidential information of the state examiner's office only, and such information shall not, except as herein provided, be imparted to any person or persons who are not officially associated in and with the office of the state examiner, and such information shall be used by the state examiner only in the furtherance of his official duties, except that it shall be lawful for the department to exchange information with the federal banking department and departments of other states and to furnish information to prosecuting officials who require the same for use in pursuit of official duties. Any state examiner or deputy, assistant, or clerk in his employ, who violates any of the provisions of this section, or willfully makes a false official report as to the condition of any bank, shall be removed from office, and shall also be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine of not exceeding one thousand dollars ($1,000.00), or by imprisonment in the state penitentiary for not exceeding five (5) years, or by both such fine and imprisonment.

History: En. Sec. 85, Ch. 89, L. 1927.

Collateral References
Banks and Banking⇐17, 21.
9 C.J.S. Banks and Banking §§ 35, 40.

5-1013. (6014.97) **Report of private bank.** The cashier of any bank doing business under the provisions of this act, when so directed by the state superintendent of banks, shall make a report to the said superintendent of banks at his call; which report shall not be made less than three (3) times during each year, and which said report shall not be made less than two (2) calendar months apart, which said reports shall be made in

a form prescribed by the superintendent of banks, verified by the oath or affirmation of said cashier, which said statements or reports must contain a full abstract of the general accounts of the bank, and exhibit under appropriate head the resources and liabilities thereof, so as to plainly show all of the resources and liabilities of said bank, and the amount at any time thereof, which said statements shall be transmitted to the superintendent within five (5) days after the receipt of the request or requisition therefor. Said report, in such condensed form as may be required by said superintendent, must be published once in a newspaper of general circulation in the place where said bank is located, or if there be no newspaper of general circulation published in said place, then in the nearest newspaper available, which publication must be at the expense of the bank making said report, and such proof of publication of the said report shall be furnished as may be required by the said superintendent. The superintendent of banks shall also have power to call for special reports from any particular bank whenever in his judgment the same are necessary under the provisions of this act.

History: En. Sec. 86, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇨16.
9 C.J.S. Banks and Banking § 36.

5-1014. (6014.98) **Receiving deposits by insolvent bank—making false entries.** Any person, or the members of any copartnership or banking association, willfully or knowingly receiving deposits, money, or commercial papers, circulating as money, when such person or copartnership or banking association is insolvent or who subscribes or makes any false statement, or entries in the books of any such bank, or who knowingly subscribes or exhibits any false papers, with the intention of deceiving any person authorized to examine the condition of any bank provided for in this act, or who willfully subscribes or makes false reports to the superintendent of banks, shall be guilty of a felony, and shall be punishable by imprisonment in the state prison for a term not exceeding five (5) years.

History: En. Sec. 87, Ch. 89, L. 1927.

Cross-Reference

Officer, agent or clerk receiving deposit while insolvent or making false entries, penalty, sec. 5-802.

Collateral References

Banks and Banking⇨84, 85, 309, 317.
9 C.J.S. Banks and Banking §§ 155, 156, 1028-1031, 1033-1037, 1039, 1040, 1042, 1067-1069, 1071-1073.

Constitutionality of statute regarding conduct of officers or directors of insolvent corporation which will render them criminally responsible. 76 ALR 530.

What amounts to a deposit within statute in relation to civil or criminal liability for accepting deposit when bank is unsafe or insolvent. 76 ALR 1320.

When bank deemed insolvent within meaning of statute. 81 ALR 1160.

Civil liability of bank officer or director permitting deposit after insolvency of bank. 87 ALR 1402.

Personal liability of directors, officers, or employees of bank interfering with payment of checks or otherwise preventing or discouraging withdrawal of deposits. 97 ALR 315.

Negligence in failing to discover insolvency of bank as equivalent of knowledge, or substitute therefor, as regards criminal responsibility of bank officer or employee for receiving deposit after insolvency. 98 ALR 615.

5-1015. (6014.99) **Bank insolvent when.** A bank is insolvent within the meaning of this act when all of its capital, surplus and undivided

profits are absorbed in losses and the remaining assets are not sufficient to pay and discharge its contracts, debts, and engagements.

History: En. Sec. 88, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐73, 309, 317.

9 C.J.S. Banks and Banking §§ 486, 488, 1028-1031, 1033-1037, 1039, 1040, 1042, 1067-1069, 1071-1073.

5-1016, 5-1017. (6014.100, 6014.101) **Repealed—Chapter 264, Laws of 1963.**

Repeal

These sections (Secs. 89, 90, Ch. 89, L. 1927), relating to bank liability on items forwarded, and to due diligence in forwarding of items for collection, were repealed by Sec. 10-102, Ch. 264, Laws 1963.

5-1018. (6014.102) **Superintendent to make rules and regulations.** The superintendent of banks shall have the power to adopt and promulgate uniform rules and regulations to govern the examination and reports of banks and prescribe the form in which such banks shall report their assets, liabilities and reserves.

History: En. Sec. 91, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐16, 17.

9 C.J.S. Banks and Banking §§ 35, 36.

5-1019. (6014.103) **Special examination defined.** Any examination made by the superintendent of banks otherwise than in the ordinary routine of the department, and because in his opinion the condition of the bank requires such examination, and every examination made at the request of the board of directors or stockholders of any bank shall be deemed a special examination.

History: En. Sec. 92, Ch. 89, L. 1927.

5-1020. (6014.104) **Examination at request of directors.** When requested in writing, upon the authority of a majority of the board of directors of any bank to make an examination of such bank, the superintendent of banks shall do so.

History: En. Sec. 93, Ch. 89, L. 1927.

5-1021. (6014.105) **Consolidation of banks.** Any two or more banks doing business in this state, may, with the approval of the superintendent of banks, in the case of state banks, consolidate, join and merge into one bank under, into and with the charter of either existing bank hereinafter referred to as the consolidated bank, on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of each bank proposing to consolidate, and be ratified and confirmed by the consent in writing of the shareholders of each such bank owning at least two-thirds of its capital stock outstanding; provided, that the capital stock of such consolidated bank shall not be less than that required under existing law for the organization of a bank of the class of the largest of the banks so consolidating.

Upon such consolidation the corporate franchise, corporate life, being and existence, and the corporate rights, powers, duties, privileges, franchises and obligations, including the rights, powers, duties, privileges and

obligations as trustee, executor, administrator, guardian and all and every right, power, duty, privilege and obligation as fiduciary, together with title to every species of property, real, personal and mixed, of such consolidating bank and banks shall, without the necessity of any instrument of transfer, be and become merged and continued in and held, enjoyed and/or assumed by the consolidated bank, and such consolidated bank shall have and enjoy the right equal as to priorities with any other applicant to appointment by the courts to the offices of executor, administrator, guardian and/or trustee under any will or other instrument made prior to such consolidation and by which will or instrument such consolidating bank was nominated by the maker to such office.

The word "bank" or "banks" as used in this section, shall be held to include commercial banks, savings banks, trust companies, investment companies and other such corporations carrying on the business of banking, trust company or investment company under the laws of this state or doing business in this state under the national banking laws of the United States.

History: En. Sec. 94, Ch. 89, L. 1927; amd. Sec. 1, Ch. 108, L. 1931.

References

Leuthold v. Camp, 273 F Supp 695.

Collateral References

Banks and Banking⇐67, 307, 315½.

9 C.J.S. Banks and Banking §§ 468, 1027, 1065.

10 Am. Jur. 2d 51, Banks, § 27 et seq.

Construction and effect of provisions for payment of dissenting stockholders in statutes relating to merger, consolidation, or reorganization of banks or other corporations. 87 ALR 597; 162 ALR 1237 and 174 ALR 960.

Statutory superadded liability of stockholders as affected by reorganization, consolidation, or merger of corporation. 89 ALR 770 and 154 ALR 427.

Constitutionality of recent legislation relating to merger, consolidation, or reorganization of banks as affected by rights of dissenting creditors or stockholders. 92 ALR 1337; 96 ALR 1445 and 104 ALR 1203.

5-1022. (6014.106) **Taxes on banks which have ceased to do business as banks.** Whenever any bank ceases to do business as a bank no taxes shall be levied or collected in accordance with the laws governing the assessment of banks, but its property shall be assessed in accordance with the laws governing the assessment of similar property of private corporations.

History: En. Sec. 95, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐12, 72, 308, 316; Taxation⇐126.

9 C.J.S. Banks and Banking §§ 8, 483, 1026, 1064.

5-1023. (6014.107) **Attachments prohibited.** No property owned by any bank, organized under the laws of the state of Montana, shall be subject to attachment.

History: En. Sec. 96, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐224.

9 C.J.S. Banks and Banking § 408.

5-1024. (6014.108) **Conversion of surplus and undivided profits to capital.** A bank having a surplus and undivided profits equal to or in excess of fifty per centum (50%) of its capital stock, may increase its capital stock

by the issuance of new stock for a part of said surplus and undivided profits. Said increase may be made by the vote of two-thirds (2/3) of the stock in person or by proxy, either at a regular annual stockholders' meeting or at a meeting called for said purpose in accordance with the bylaws of the corporation. All increases of capital stock made under this section must be accomplished in such a manner as to conform to the requirements of this act as to surplus of banks when first incorporated. New capital stock when issued by a bank against its surplus and undivided profits may be issued without the payment of cash therefor, but the same shall be charged upon the books of the bank and in the statements thereof against surplus and undivided profits in such a manner that the combined capital, surplus and undivided profits shall not be reduced by the issuance of said new stock. Whenever a bank shall have voted to issue any stock as contemplated in this section, it shall certify such action to the superintendent of banks, who shall within thirty (30) days, approve or reject the plan. His action shall be final and written notice thereof shall be given to the bank. If the superintendent of banks approves of the issuance of said new stock and so notifies the bank, it shall thereupon file certificate thereof with the county clerk and recorder of the county wherein the bank is located and with the secretary of state of the state of Montana. Upon said filing with the secretary of state, the increase shall become effective.

History: En. Sec. 97, Ch. 89, L. 1927.

9 C.J.S. Banks and Banking §§ 59, 959, 1046.

Collateral References

Banks and Banking⇐37, 292, 312.

5-1025. (6014.109) **Superintendent to examine trusts.** It shall be the duty of the state superintendent of banks as a part of the examination of trust companies and banks to check all trusts, trust funds and trust and estate accounts held in the possession and control of the bank or trust company.

History: En. Sec. 98, Ch. 89, L. 1927.

5-1026. (6014.110) **Extent assets may be pledged.** No bank, banker or bank officer shall, except as otherwise authorized by law, pledge or hypothecate as collateral security for money borrowed, its assets in a ratio exceeding one and one-half times the amount borrowed (except as otherwise authorized by the superintendent).

History: En. Sec. 99, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐97, 295, 315 (1).
9 C.J.S. Banks and Banking § 170.

5-1027. (6014.111) **Superintendent may make rules.** The superintendent of banks shall have the authority to make and promulgate reasonable rules and orders in the matter of bookkeeping and accounting by state banks, including the keeping of reasonable credit information or information in connection with assets, and for information in connection with charged off items.

History: En. Sec. 100, Ch. 89, L. 1927.

5-1028. (6014.112) **Branch bank prohibited — exceptions.** No bank shall maintain any branch bank, receive deposits or pay checks, except over the counter of and in its own banking house. Provided, that nothing in this section shall prohibit ordinary clearinghouse transactions between banks.

With the prior approval of the superintendent of banks, any bank doing business in this state may establish and maintain not more than one (1) detached drive-in and walk-up facility consisting of one (1) or more teller's windows. The distance of the facility from the main banking house shall not exceed one thousand (1,000) feet measured in a straight line from the closest point of the main banking house to the farthest point of the detached facility. The facility shall not be closer than two hundred (200) feet to a facility operated by any other bank nor closer than three hundred (300) feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The distances herein specified in relation to a facility operated by any other bank and in relation to the main banking house of any other bank may be decreased by mutual written agreement of the banks involved to not closer than one hundred and fifty (150) feet to a facility operated by any other bank nor closer than two hundred (200) feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The service of the facility shall be limited to receiving deposits of every kind, cashing checks or orders to pay, receiving payments payable at the bank and such other transactions as are normally and usually conducted or handled at tellers' windows in the main banking house.

History: En. Sec. 101, Ch. 89, L. 1927; amd. Sec. 1, Ch. 39, L. 1963; amd. Sec. 1, Ch. 80, L. 1965.

Construction

Section 5-1124 creates an exception to this section and permits branch banking in the limited class of cases therein described. Leuthold v. Camp, 273 F Supp 695.

Holding Company Banking

This section does not prohibit holding company banking. First Nat. Bank in Billings v. First Bank Stock Corp., 197 F Supp 417, 427, affirmed in 306 F 2d 937.

Intention To Operate as Branch

A state bank whose stock was substantially all owned by a national bank did not violate this section, although the interlocking directorates of the national bank and the state bank at one time intended that the state bank should operate as a branch of the national bank, where steps were taken to eliminate any such intention. First Nat. Bank in Billings v. First Bank Stock Corp., 197 F Supp 417, 427, affirmed in 306 F 2d 937.

Unitary Type of Operation

A bank did not violate this section where the unitary type of operation characteristic of branch banking was not present. First Nat. Bank in Billings v. First Bank Stock Corp., 306 F 2d 937, 943, distinguished in 323 F 2d 290, 303.

Collateral References

Banks and Banking⇨33, 318.
9 C.J.S. Banks and Banking §§ 55, 1074.

5-1029. (6014.113) **Past due and doubtful paper.** Every bank carrying any bad debt, or a debt of doubtful value, as an asset, shall upon the request or demand of the superintendent of banks collect the same, or put it in good bankable condition, or charge it out of its books.

History: En. Sec. 102, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇨16.
9 C.J.S. Banks and Banking § 36.

5-1030. (6014.114) **Reserve—reports on.** It shall be the duty of any bank whose reserve shall drop below the legal requirements to report the matter to the superintendent of banks immediately and as often thereafter as the superintendent shall ask for said report.

History: En. Sec. 103, Ch. 89, L. 1927.

Collateral References
10 Am. Jur. 2d 56, Banks, § 31.

5-1031. (6014.115) **Payments to foreign administrator.** Any bank doing business in this state may pay any money remaining to the credit of a deceased depositor or deliver any personal property in its possession belonging to such deceased depositor to an administrator or executor of such depositor duly appointed and qualified in another state, provided no demand therefor shall have been previously made by an administrator or executor appointed in any county of this state, and such payment shall discharge the bank making the same from its liability on account of such deposit.

History: En. Sec. 104, Ch. 89, L. 1927.

34 C.J.S. Executors and Administrators §§ 998-1000, 1005.

Collateral References
Executors and Administrators⇐519 (1).

5-1032. (6014.116) **Bonding of employees.** It shall be the duty of the board of directors of every bank to require that all officers and employees of banks whose duty includes the handling of moneys, notes, bonds, credits and cash items, and whose duties include bookkeeping and/or the making of entries in relation to the business of the bank and its customers, be bonded. The board of directors shall by order duly entered upon the minutes books of the board designate the officers and employees to be bonded and the amount of bonds to be given. Such action as to the personnel and amount and the surety company or sureties to be subject to approval by the state superintendent of banks, the bonds to be in such form as shall be provided or approved by the state superintendent of banks, the bonds to be approved by the president of the bank and his action reported to the board of directors; all bonds required by this section to be kept in the custody of the bank subject to inspection by examiners from the office of the superintendent of banks; provided, as far as possible, they shall not be placed in the custody of the officer or employee for whom the same is given.

History: En. Sec. 105, Ch. 89, L. 1927; amd. Sec. 3, Ch. 145, L. 1931.

9 C.J.S. Banks and Banking §§ 108, 110-115, 969-977, 1051-1053.
10 Am. Jur. 2d 91, Banks, § 82 et seq.

Collateral References
Banks and Banking⇐50, 51, 294, 314.

5-1033. (6014.117) **Corporate existence — ceases when.** The charters and the corporate existence of banks shall cease automatically and become nonexistent upon the completion of liquidation of the affairs of said bank whether accomplished voluntarily or through legal process. For the purposes of this section a bank's affairs shall be considered liquidated and completed when all of its property of every kind has been sold or applied

toward the payment of its obligations, and the corporation is left without property in existence or in reasonable expectancy.

History: En. Sec. 106, Ch. 89, L. 1927.

9 C.J.S. Banks and Banking §§ 50, 51, 483, 1064.

Collateral References

Banks and Banking⇐29, 72, 308, 316.

5-1034. (6014.118) **Bank advertising before issuance of charter.** It shall be unlawful for any individual, firm or corporation to advertise, publish or otherwise promulgate that it is engaged in the banking business without first having obtained authority from the department of banking, as herein provided. Any such individual, or member of such firm, or officer of any such corporation so offending, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished as provided by the laws of this state.

History: En. Sec. 107, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐8.

9 C.J.S. Banks and Banking § 9.

5-1035. (6014.119) **Right of examination by stockholder.** No stockholder of any bank incorporated under the laws of this state who is not a director shall have the right to inspect the books and records of such bank showing its transactions with any of its customers, but any such stockholder shall have the right to inspect during business hours the general statement book showing the general assets and liabilities of such bank.

History: En. Sec. 108, Ch. 89, L. 1927.

Constitutionality

This section, which, by denying to a stockholder in a state bank, the right to inspect certain of its books, in effect prohibits bank officials from divulging semi-confidential information they receive as to the financial standing of the bank's customers, held not a special law (section 26, article V of the constitution), nor one making an unreasonable classification in making the act applicable only to state banks. State ex rel. Powell v. State Bank of Moore, 90 M 539, 548, 4 P 2d 717, 80 ALR 1494.

Since Congress alone has the power to regulate the internal affairs of national banks, and by its failure to declare upon the right of a stockholder in such a bank to inspect its books and records, left the common law on that subject in force, this section, limiting the right of inspection to stockholders in state banks, may not be held unconstitutional as discriminatory because not extending the same right to stockholders in all banks doing business in the state. State ex rel. Powell v. State Bank of Moore, 90 M 539, 548, 4 P 2d 717, 80 ALR 1494.

Petition by Stockholder

A stockholder in a state bank who seeks to compel officers of the bank to permit inspection of the bank's books and records, proceeding under this section, which grants such right as to the general statement book showing the bank's general assets and liabilities, excluding others, must in his petition for a writ of mandate allege that the books and records enumerated in his demand do not contain information prescribed by the act. State ex rel. Powell v. State Bank of Moore, 90 M 539, 548, 4 P 2d 717, 80 ALR 1494.

If the rule declared by some courts that, since the granting of a writ of mandate is largely a matter of discretion, the remedy may be denied where it involves determination of the constitutionality of a statute, is sound, it is inapplicable in a case where the writ is sought to compel permission to inspect books and records of a state bank by a stockholder under this section. State ex rel. Powell v. State Bank of Moore, 90 M 539, 548, 4 P 2d 717, 80 ALR 1494.

Collateral References

Banks and Banking⇐43, 293, 313.

9 C.J.S. Banks and Banking §§ 60, 67-69, 72, 965, 966, 1048.

5-1036. (6014.120) **Removal of directors, officers, or employees.** Any director, officer or employee of any bank found by the superintendent, aft-

er examination, to be negligent, dishonest, reckless or incompetent, shall be removed from office by the board of directors of such bank on the written order of the superintendent, and if the directors neglect or refuse to remove such director, officer or employee, in event any losses accrue to such bank thereafter by reason of the negligence, dishonesty, recklessness or incompetency of such director, officer or employee, such written order of the superintendent shall be deemed to be conclusive evidence of the negligence of the directors failing to act upon the same as herein provided in any action brought against them, or any of them, by a depositor or creditor for recovery of such losses.

History: En. Sec. 109, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐51, 58 (5), 294, 314.

9 C.J.S. Banks and Banking §§ 110-115, 146, 969-977, 1051, 1053.

5-1037. (6014.121) **Borrowing money — limitations.** No bank shall borrow money, except to meet its seasonal requirements or unexpected withdrawals. Provided, that at no time shall the bills payable and rediscounts of any bank be permitted to exceed in the aggregate an amount equal to the capital and surplus of such bank, except with the written consent of the superintendent, first had and obtained. Whenever it shall appear to the superintendent that a bank is borrowing money in excess of the above limitation, or for the purposes other than as specified above, he may require it to reduce such borrowing within a time to be fixed by him.

History: En. Sec. 110, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐97, 295, 315 (1).

9 C.J.S. Banks and Banking §§ 170, 978-984, 1059-1063.

10 Am. Jur. 2d 259, Banks, § 289 et seq.

5-1038. (6014.122) **No certificate of deposit to issue for borrowed money.** No bank shall issue its certificate of deposit for the purpose of borrowing money or make partial payments upon any certificate of deposit.

History: En. Sec. 111, Ch. 89, L. 1927.

Deposit of Fiduciary Funds

When guardian deposited ward's funds in a bank and took a time certificate of deposit the certificate was not issued "for the purpose of borrowing money" by the bank, but rather as an accommodation to a customer. In re Welch's Estate, 100 M 47, 53, 45 P 2d 681.

Purpose of Section

It would seem the purpose of this section is to require banks, if they desire to "borrow" money, to execute the instrument evidencing the debt with the authority and in the manner required in executing a corporate note, but does not prohibit the issuance of certificates of deposit in the ordinary course of banking business. In re Welch's Estate, 100 M 47, 53, 45 P 2d 681.

Collateral References

Banks and Banking⇐152, 295, 315 (1).

9 C.J.S. Banks and Banking §§ 311-317, 978-984, 1059-1063.

5-1039. (6014.123) **Giving security for deposit prohibited — exceptions.** It shall be unlawful for any bank to pledge, mortgage or hypothecate to any depositor any of its real or personal property as security for any deposit and any pledge, mortgage or hypothecation made in violation thereof shall be unenforceable; provided, however, that this provision shall not apply to any deposits of money of the United States and public

funds deposited in accordance with the provisions of any depository act of this state, or the United States, or bankruptcy estate funds or deposits, also deposits of receivers or trustees in bankruptcy, deposited under the direction and supervision of a court of record of the state of Montana or of the United States.

History: En. Sec. 112, Ch. 89, L. 1927; amd. Sec. 1, Ch. 33, L. 1941.

References

Ainsworth v. Kruger, 80 M 468, 476, 260 P 1055.

Collateral References

Banks and Banking⇐86, 94, 96, 295, 315.

9 C.J.S. Banks and Banking §§ 157, 164, 168, 169, 170, 978-984.

5-1040. (6014.124) **Penalty for unlawful hypothecation of property received.** Any officer or employee of any bank doing business in this state, who, except in the manner authorized by law or the contract of the parties, hypothecates, pledges, or in any way alienates any notes, stocks, bonds, mortgages, securities or any other property coming into his hands or into the possession of said bank as collateral, for safekeeping or in any other manner, and to which the bank has not acquired full title, shall be guilty of embezzlement, and upon conviction thereof shall be punished as for other felonies.

History: En. Sec. 113, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐61, 294, 314.

9 C.J.S. Banks and Banking §§ 148-154, 969-977, 1051-1053.

5-1041. (6014.125) **Concealment of loans and discounts.** Any officer or employee of any bank who intentionally conceals from the directors of such corporation or committee thereof where the directors have delegated authority to a committee to pass on loans and discounts, any discount or loan made by and in behalf of the corporation or from its assets between the regular meetings of its board of directors or committee, the purchase of any security, the sale of any of its securities, or any guarantee, repurchase agreement or any other agreement whereby the corporation is obligated, during the same period, is guilty of a misdemeanor, and on conviction, must be imprisoned in the county jail for not more than twelve (12) months for each offense, and may also be fined not more than five hundred dollars ($500.00), at the discretion of the court.

History: En. Sec. 114, Ch. 89, L. 1927.

5-1042. (6014.126) **Transaction on holidays.** Nothing in any law of this state shall in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification or acceptance of a check or other negotiable instrument, or any other transaction by a bank in this state, because done or performed during any time other than regular banking hours or on a legal holiday; provided, that nothing shall be construed herein to compel any bank in this state, which by law or custom is entitled to close at twelve noon on any Saturday, or for the whole or part of any legal holiday, to keep open for transaction of business, or to perform any of the acts or transactions aforesaid on any Saturday after such hour or on any legal holiday except at its option.

History: En. Sec. 115, Ch. 89, L. 1927.

Collateral References

Holidays⇐4.
40 C.J.S. Holidays § 4.

5-1043. (6014.127) **Repealed—Chapter 264, Laws of 1963.**

Repeal

This section (Sec. 116, Ch. 89, L. 1927), relating to the time limit on stop payment orders, was repealed by Sec. 10-102, Ch. 264, Laws 1963.

5-1044. (6014.128) **Embezzlement.** Any banker, officer, director or employee of any bank who embezzles or abstracts or misapplies any of the moneys, funds, credits, or property of the bank when owned by it or held in trust; or who issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment or decree, with intent, in any case to injure or defraud the bank or any person or corporation, or to deceive any officer of the bank, or any other person, or any one appointed to examine the affairs of such bank, or any person, who with like intent, aids or abets any officer, clerk or employee in the violation of this section, shall be guilty of a felony and upon conviction thereof, shall be imprisoned in the state penitentiary for a period of not exceeding twenty (20) years.

History: En. Sec. 117, Ch. 89, L. 1927.

Cross-Reference

Conversion by officers, penalty, sec. 94-2715.

Collateral References

Banks and Banking⇐61 et seq.; Embezzlement⇐20.
9 C.J.S. Banks and Banking §§ 148-154; 29A C.J.S. Embezzlement §§ 11, 14, 21.

5-1045. (6014.129) **False statement to obtain loan.** Whoever shall make any statement, knowing it to be false, for the purpose of obtaining for himself or for any other person, firm, corporation, or association a loan of money from any bank, or for the purpose of gaining an extension of time of payment of any debt due such bank, shall be punished by a fine of not more than one thousand dollars ($1000.00) or by imprisonment in the county jail for not more than one year, or both.

History: En. Sec. 118, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐21.
9 C.J.S. Banks and Banking § 40.

5-1046. (6014.130) **Persons previously convicted under banking laws —bank employment.** It shall be unlawful for any one having been convicted of the violations of the banking laws of any state or nation, to accept employment in a bank in this state, without first stating said facts to the directors of said bank. No such person shall be employed in any bank without the approval of the superintendent of banks, granted in writing after a full consideration of the facts.

History: En. Sec. 120, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇐51, 294, 314.
9 C.J.S. Banks and Banking §§ 110-115, 969-977, 1051, 1053.

5-1047 to 5-1049. Repealed—Chapter 264, Laws of 1963.

Repeal

These sections (Secs. 1 to 3, Ch. 19, L. 1951), relating to the time allowed banks for the refusal of demand items presented for credit, were repealed by Sec. 10-102, Ch. 264, Laws 1963.

5-1050. Bank records—when destruction permitted. Banks shall not be required to preserve or keep their records for a longer period than eleven (11) years next after the first day of January of the year following the time of the making of such records; provided, however, that the following records shall not be destroyed, viz., ledger sheets showing unpaid balances in favor of depositors of any banks. No liability shall accrue against any bank destroying any such records (except records the destruction of which is forbidden hereby) after the expiration of the time provided in this section.

History: En. Sec. 1, Ch. 77, L. 1951.

Collateral References

Corporations⊂⊃395.
19 C.J.S. Corporations § 988.

5-1051. Photographic or microfilm reproduction of bank records—admissibility in evidence. Banks are hereby authorized to make, at any time, photographic or photostatic copies, or microfilm reproductions of any records or documents including photographic enlargements and prints of microfilms, and to preserve, store, use and employ the same in carrying on business. In any action or proceedings in which any bank records may be called in question or be demanded of any bank or any officer or employee thereof, a showing that such records have been destroyed in the regular course of business shall be a sufficient excuse for the failure to produce them; and, upon such showing, secondary evidence of the form, text and contents of the original records, including photostatic, photographic or microfilm reproductions thereof (and photographic enlargements and prints of microfilm reproductions), when made in the regular course of business, shall be admissible in evidence in any court of competent jurisdiction or in any administrative proceeding. Any photostatic, photographic or microfilm reproductions (including enlargements of the latter) made in the regular course of business, of any original files, records, books, cards, tickets, deposit slips, or memoranda which were in existence at the effective date of this act shall be admissible in evidence in proof of the form, text and content of any said originals which may be destroyed in the regular course of business after the effective date of this act.

History: En. Sec. 2, Ch. 77, L. 1951.

Compiler's Note

The effective date of this act was July 1, 1951.

Checking Account Records

In action by administratrix to recover amount of automobile purchase loan made by decedent to defendant, bank records of decedent's checking account were properly admitted as evidence. Olson v. McLean, 132 M 111, 313 P 2d 1039, 1042, 1044.

Collateral References

Evidence⊂⊃359, 380.
32 C.J.S. Evidence § 714.

5-1052. Admissibility of photographic copies in evidence—exception when original available. Any photostatic or photographic or microfilm reproductions (including enlargements of the latter) of any original records or files of any bank, whether in the form of an entry or entries in a book, or any other form of record, shall be admissible in evidence in any court of competent jurisdiction in proof of an act, transaction occurrence or event, when shown to be made in the regular course of business of

the bank. But nothing contained in this act shall be construed to authorize the use of secondary evidence in administrative or court proceedings when original records are in existence and available for use in accord with the rules of evidence as set forth in the Code of Civil Procedure.

History: En. Sec. 3, Ch. 77, L. 1951.

5-1053. Destruction or reproduction "in regular course of business" defined. Destruction in the regular course of business shall include destruction at any time after making such reproductions; and reproductions made in the regular course of business shall include reproductions made at any time prior to the destruction of the original, in each case, if done in good faith and without intent to defraud.

History: En. Sec. 4, Ch. 77, L. 1951.

5-1054. Application of preceding sections. The provisions of this act shall be applicable to all records in existence at the time of the passage of this act, and to all records originating after said date; and such provisions of this act shall apply to all banks organized under the laws of the state of Montana; and, also, to all national banks located in the state of Montana, as far as applicable to such national banks.

History: En. Sec. 5, Ch. 77, L. 1951.

5-1055. Closing on Saturdays authorized—Saturday treated as holiday. Any bank, which term for the purposes of this act shall mean any corporation as defined in section 5-102, including commercial banks and trust companies, as more particularly defined in sections 5-104, 5-105 and 5-106, and any national bank or national banking association incorporated or organized under the laws of the United States of America and any federal reserve bank may, at its election, remain closed and refrain from the transaction of any business on Saturdays, and any Saturday on which any such bank remains closed shall be, with respect to such bank, a holiday and not a business day. Any act, authorized, required or permitted to be performed at or by, or with respect to any bank as herein defined, including any national bank or national banking association, and any federal reserve bank, on a Saturday, may be performed on the next succeeding business day, and no liability or loss of any rights of any kind shall result from such closing on Saturday, or from the nonopening of any bank on any Saturday under the authority of this act, for the transaction of business.

History: En. Sec. 1, Ch. 124, L. 1955.

NOTE.—See enumeration of legal holidays for banks which close on Saturdays in section 19-107 as amended by Chapter 209, Laws 1955; Chapter 6, Laws 1965.

5-1056. Amendment of bylaws to permit Saturday closing — notice. Any bank, as herein defined, and any national bank or national banking association, and any federal reserve bank, may, at any time enact or amend bylaws to provide for its banking hours or business days, or to change its banking hours or business days, including remaining closed, or closing, on any Saturdays, at any regular or special meeting of its board of directors. Any such bank enacting a bylaw or amending any bylaw with respect to such subject matter shall give reasonable notice to the pub-

lic of the enactment of a new bylaw, or amendment of bylaws, by (a) posting an announcement in the lobby of the bank, incorporating the text of the bylaw, or of the amended bylaw, and advising of the date the same becomes effective, or (b) by mailing a copy of such notice to each of the bank's customers as of the date of the adoption of such bylaw or amendment; and in addition to posting or mailing, by publishing such notice not less than once in each week, for two (2) weeks, in any newspaper of general circulation in the county wherein such bank has its office, and, in any event, such notice, whether posted and published, or mailed and published, shall be given at least fourteen (14) days in advance of the effective date of the bylaw, or amended bylaw.

History: En. Sec. 2, Ch. 124, L. 1955.

Collateral References

Banks and Banking⇨22.
9 C.J.S. Banks and Banking § 41.

5-1057. Interest payable at bank on such Saturday may be paid next succeeding business day. Where, by the terms of any note or obligation, interest is payable to a bank on any Saturday upon which a bank is closed pursuant to the authority of this act, interest payable to such bank on any such Saturday may be paid in the amount due on such Saturday on the next succeeding business day with the same effect as if paid to such bank on such Saturday.

History: En. Sec. 3, Ch. 124, L. 1955.

CHAPTER 11

CLOSING AND LIQUIDATION OF BANKS

Section 5-1101. Grounds for closing bank.
5-1102. Penalty for closing bank with criminal intent.
5-1103. Bank may be placed in superintendent's possession.
5-1104. Effect of posting notice.
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5-1101. (6014.131) **Grounds for closing bank.** Whenever it shall appear to the superintendent of banks that:

(1) Any bank has willfully violated its charter or any law of this state; or,

(2) Has willfully violated any general rule or regulation of the superintendent, made in accordance with law; or,

(3) That the capital of any bank is impaired or for any reason is below the amount required by law and has not been made good after notice, as provided by law, or without such notice, in event a majority of the board of directors of such bank notify the superintendent in writing that the same cannot be made good; or,

(4) That such bank cannot meet or has failed to meet its liabilities or any of the same, as they become due in the regular course of business; or,

(5) That its reserve has fallen below the amount required by law and it has failed to make good such reserve within thirty (30) days after being requested to do so by the superintendent, or, without such notice, if a majority of the directors, in writing, notify the superintendent that such reserve cannot be made good within thirty (30) days, or if it is continually allowing its reserve to fall below the required amount; or,

(6) That it is conducting business in an unsafe and unauthorized manner, or is in an unsafe or unsound condition; or,

(7) It has refused to submit its papers, books and concerns to the inspection of the superintendent or his authorized agent or representative; or,

(8) That any officer of such bank has refused to be examined on oath touching the affairs, business or concerns of any bank in so far as such relate to the solvency of the bank or matters having to do with the supervision by the superintendent.

The superintendent himself, or his duly authorized agent upon express authority from the superintendent, may, in his discretion close said bank and take possession of all the books, records, assets and business of every description of such bank, and hold the same and retain possession thereof until such bank shall be authorized by him to resume business, or its affairs be liquidated as herein provided, and he shall do so in cases where a bank comes into his hands voluntarily, or in the manner provided by law.

The powers and authority conferred on the superintendent by this section, except in cases of voluntary surrender, shall be considered as discretionary and not as mandatory, and so long as a superintendent acts in good faith in the matter, neither he nor his deputies shall be held liable civilly or criminally or upon their official bonds in any action taken thereunder or for any failure to act thereunder.

History: En. Sec. 121, Ch. 89, L. 1927.

Collateral References

Banks and Banking⇨68, 308, 316.
9 C.J.S. Banks and Banking §§ 473, 1026, 1064.

Rights of owners of securities deposited in bank, upon its insolvency. 51 ALR 914; 84 ALR 1534 and 126 ALR 625.

5-1102. (6014.132) **Penalty for closing bank with criminal intent.** If any superintendent of banks or official in the department of banking, shall, as a result of malice or for personal gain, declare any bank insolvent, he shall, upon conviction thereof, be subject to punishment by fine not exceeding one thousand dollars ($1,000.00) or imprisonment in the county jail not exceeding one (1) year, or both, within the discretion of the court and shall forfeit his office.

History: En. Sec. 122, Ch. 89, L. 1927.

5-1103. (6014.133) **Bank may be placed in superintendent's possession.** Any bank may place its affairs and assets under the control and in the possession of the superintendent by posting a notice on the front door of such bank, indicating that said bank is in his hands, which notice shall be signed, in their own handwriting, by a majority of the directors in office of such bank. Immediately upon the posting of such notice by any bank, it shall notify the superintendent thereof.

History: En. Sec. 123, Ch. 89, L. 1927.

5-1104. (6014.134) **Effect of posting notice.** The posting of such notice by the directors of any bank, or of a like notice signed by the superintendent, shall be sufficient to place all assets and property of such bank, of whatever nature and wherever situate, in possession of the superintendent, and shall operate as a bar to any detachment or any other legal proceedings against such bank or its assets, and no valid lien or claim can be acquired or created, or transfer or assignment made in any manner, binding or affecting any of the assets of such bank after the posting of such notice or after taking possession of any bank by the superintendent without his consent.

History: En. Sec. 124, Ch. 89, L. 1927.

Action To Establish Claim as Preferred against Superintendent of Banks

An action to recover on a preferred claim against an insolvent bank may, under this section, and section 5-1107, be brought against the superintendent of banks, as against the contention that it must be brought against the bank. Caterpillar Tractor Co. v. Johnson, 99 M 269, 277, 43 P 2d 670.

Collateral References

Banks and Banking⇨64, 70, 308, 316.
9 C.J.S. Banks and Banking §§ 469-471, 475-482, 1026, 1064.

5-1105. (6014.135) **Taking possession of bank — notice.** On taking possession of the assets and business of the bank, the superintendent shall, in addition to posting notice thereof on the front door of such bank as aforesaid, also notify at once, personally or by wire, all corresponding banks, and any and all persons or corporations known to him to be holding or in possession of, any of the estate of such bank.

History: En. Sec. 125, Ch. 89, L. 1927.

5-1106. (6014.136) **Resumption after closing.** After the superintendent has taken possession of any bank, he may permit such bank to resume business upon such conditions as may be approved by him.

History: En. Sec. 126, Ch. 89, L. 1927.

Collateral References

10 Am. Jur. 2d 791, Banks, § 821 et seq.

Legal questions presented by the reopening of closed banks. 80 ALR 1487 and 99 ALR 1217.

Agreement by depositors to prevent closing, or to assist in opening, of bank as affecting their right or priority in respect of their deposits. 88 ALR 1009.

Constitutionality of recent legislation relating to merger, consolidation, or reorganization of bank as affected by rights of dissenting creditors or stockholders. 92 ALR 1337; 96 ALR 1445 and 104 ALR 1203.

Statutes and agreements relating to "freezing" or "stabilizing" bank deposits. 95 ALR 1214.

Estoppel by acquiescence or delay to question validity of plan for reorganization of bank. 139 ALR 659.

5-1107. (6014.137) **Powers of superintendent on closing bank—court proceedings.** Upon taking the assets and business of any bank into his possession, the superintendent is authorized to collect all moneys due to such bank, and to do such other acts as are necessary to conserve its assets and business, and he shall proceed to liquidate the affairs thereof. He shall have general and inclusive power and authority, except as otherwise limited by the terms of this act, to do any and all acts, to take any and all steps necessary, or, in his discretion, desirable for the protection of the property and assets of such bank and the speedy and economical liquidation of the assets and affairs of such bank and the payment of its creditors, or for the reopening and resumption of business by said bank, where that is practicable or desirable. He may institute, in his own name as superintendent, or in the name of the bank, such suits and actions and other legal proceedings as he deems expedient for such purposes, and by making application to the district court of the county in which such bank is located, or to the judge thereof, in chambers, may procure an order to sell, compromise or compound any bad or doubtful debt or claim, and to sell and dispose of any or all the assets, which sale may be made to stockholders, officers, directors, or others interested in such bank, on consent of the court. On such court proceedings the bank shall be made a party by notice issued on order of the court or judge, in lieu of summons, and served upon some officer of the bank, if any there be in the county, but if no officer can be found in the county then the same shall be posted in manner and form the same as probate notices, that is, in three (3) public places in the county for at least ten (10) days before the day of hearing thereon. The hearing of any such application or petition by the superintendent may be had at any time, either in term or vacation in court, or in chambers, as the court may order, after said bank has had five (5) days' notice of such application, or the notice has remained posted for at least ten (10) days.

History: En. Sec. 127, Ch. 89, L. 1927.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

Action To Establish Claim as Preferred against Superintendent of Banks

An action to recover on a preferred claim against an insolvent bank may, under section 5-1104, and this section, be brought against the superintendent of banks, as against the contention that it must be brought against the bank. Caterpillar Tractor Co. v. Johnson, 99 M 269, 277, 43 P 2d 670.

Liquidating Officer Distinguished from Receiver

Except where the statute provides otherwise, the liquidating officer of an insolvent bank is not required to consult the court in charge of the liquidation; he acts as a state officer by authority of the statute and not by virtue of an appointment by the court, and in this respect his status differs from that of a receiver. Merchants Nat. Bank Bldg. v. Farmers State Bank of Cut Bank, 111 M 559, 562, 111 P 2d 806.

Unauthorized Sale of Assets

The receiver or liquidating officer of a state bank being merely an administrative officer of the court appointing him, has no original or inherent authority, but whatever power he possesses comes from the court or from statute, or such as may reasonably or necessarily be implied from such orders or statutes by which his express power is defined, and a pretended sale of assets without authority is void; hence where plaintiff purchased a note, not listed in the court order of sale, he failed to prove he was the legal owner, which proof is required of anyone not an original party to a note. Parcells v. Price, 110 M 537, 540, 104 P 2d 12.

Venue of Action against Liquidating Officer To Enforce Payment of Claim

An action against the liquidating officer of an insolvent bank based upon his refusal to pay an adjudicated claim against the bank was properly commenced in the county where payment was refused and where the officer resided and maintained his office, under section 93-2902, subd. 2, as against the contention that it was in the county where the bank was located and claim adjudicated. Merchants Nat. Bank Bldg. v. Farmers State Bank of Cut Bank, 111 M 559, 562, 111 P 2d 806.

Collateral References

Banks and Banking⇦63½, 317.
9 C.J.S. Banks and Banking §§ 432, 1067.

Power of receiver or liquidating officer of insolvent bank or trust company to borrow, and pledge assets, and power of court to authorize him to do so. 82 ALR 1228 and 91 ALR 1119.

Right of creditors or stockholders of insolvent bank in charge of liquidating officer who refuses or fails to enforce liability of third persons to bank, to maintain action for that purpose, and conditions of such right. 97 ALR 169 and 116 ALR 783.

5-1108. (6014.138) **Recourse of aggrieved bank—application to court for injunction—pleadings—evidence—appeals.** Any bank deeming itself aggrieved by the action of superintendent in taking possession of its assets or closing its doors may, within ten (10) days after such possession shall have been taken, apply to the district court of the county in which its principal place of business is located, or to the judge thereof in chambers, to enjoin further proceedings by the superintendent, and the court or the judge thereof in chambers, after notifying the superintendent to appear at a specified time and place to show cause why further proceedings should not be enjoined, and after hearing the allegations and proofs of the parties, and determining facts, may, on the merits, dismiss such application, or enjoin the superintendent from further proceeding and direct him to surrender the business and assets of said bank. Such application for injunction may be heard at any time after five (5) days' notice from the time of service on said superintendent, in the discretion of the court, or the judge thereof, or at any time prior thereto by the consent of the superintendent. Application therefor shall be made on the verified complaint of the bank, in the ordinary form used in civil actions in district court, and a copy of such complaint shall be served on the superintendent with the order to show cause. The superintendent shall, at least two (2) days before the time set for hearing, file in the cause, and serve upon counsel for plaintiff an answer to the complaint, also in the ordinary form used in civil actions in the district court. Demurrers and motions directed to pleadings are not permissible in proceedings had under this section, but any questions raised by demurrer or motion in other actions may be raised in the an-

swer. On the issues thus made on the complaint and answer, the court, or the judge thereof at chambers, at the time fixed for showing cause, or at such other time to which he, in his discretion, may continue the same, shall try the matter on the merits by hearing the allegations and proofs of the parties, in the same manner as on the trial of ordinary civil actions in the district court, and the rules governing the trial of ordinary civil actions and for the production and taking of evidence and hearing the examinations of witnesses and the entry of findings and judgments therein, shall prevail. In event the superintendent makes no appearance in the time limited, the court shall enter his default and proceed to hear the proofs of the plaintiff in like manner as in civil actions under similar circumstances, and enter judgment accordingly. The judgment entered either after hearing on the merits or by default, shall be final judgment from which either party shall have the right, by notice filed within twenty (20) days after entry, to appeal to the supreme court, in the same manner as from final judgment in a civil action. Provided, however, that during the pendency of such litigation the superintendent of banks shall take such action in relation to the assets of said bank as is necessary to conserve them.

History: En. Sec. 128, Ch. 89, L. 1927.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

References

Merchants Nat. Bank Bldg. v. Farmers State Bank of Cut Bank, 111 M 559, 562, 111 P 2d 806.

5-1109. (6014.139) **Superintendent may appoint agents — liquidating agents — salaries and expenses.** The superintendent may, under his hand and seal, appoint and authorize an agent to assist him or act for him in the performance of any powers or duties hereunder, the certificate of appointment to be filed in the office of said superintendent, and a certified copy thereof delivered to such agent. Such agent and other employees hereinafter mentioned, shall receive a salary, to be fixed as hereinafter provided, for the time he is actually engaged in the performance of such duties. The superintendent may also employ such attorneys and procure such expert accountants and other experts, assistants and employees as may be necessary in the liquidation and distribution of the assets of any such bank, and the performance of his duties hereunder, and may retain such of the officers or employees of such bank as he may deem necessary. He shall require from the agent appointed by him and from such of the assistants as will have charge of any of the assets of the bank such security for the faithful discharge of their duties as he may deem proper.

Provided, further, that the superintendent may also designate any one of the examiners of the department of banking as a general liquidating agent, with his office in the department of banking, for the purpose of liquidating any one or all state banks in the process of liquidation, and for the purpose of conducting such liquidation under the direction of said superintendent; and may authorize the said liquidating agent to employ such clerical help as may be necessary. Such liquidating agent shall receive a salary to be fixed by the superintendent of banks, not to exceed

three thousand six hundred dollars ($3,600.00) per year, and necessary traveling and hotel expenses incurred in the performance of his official duties. The salary of the liquidating agent and necessary clerical assistance, and other expenses incurred by the said liquidating agent shall be borne equally and ratably by the bank or banks in process of liquidation under such agent's charge in proportion to the total amount of resources of each of such banks. The funds for such expenses shall be raised by assessing each bank in ratio herein set forth and paying such expenses direct to the persons entitled thereto, without depositing any of such funds in the state treasury.

History: En. Sec. 129, Ch. 89, L. 1927.

5-1110. (6014.140) **Compensation of agents and attorneys.** The compensation of the agents, appointed by the superintendent, and of attorneys, expert accountants and other assistants, and all expenses of liquidation and distribution of a bank whose assets and business shall be taken possession of by the superintendent, shall be fixed by the superintendent, but subject to be approved by the judge of the district court of the county in which the bank is located, on notice of such bank, and the superintendent of banks shall upon written request of said district judge supply semiannual statements showing the condition of said bank in process of liquidation. Except in cases of emergency, the compensation to be paid to attorneys and expert accounts shall be fixed and approved before services are rendered. When the compensation shall have been so fixed and approved and the services rendered, the same shall be paid out of the funds of such bank in the hands of the superintendent, and shall be a proper charge and lien on the assets of such bank as herein provided.

History: En. Sec. 130, Ch. 89, L. 1927.

5-1111. (6014.141) **Notice to creditors of insolvent bank.** The superintendent shall cause notice to be given by advertisement in a newspaper of general circulation in the town or city in which said bank is situated, if there be one, and if not, then in such other newspaper published in the state of Montana, as the superintendent shall designate, once a week for two successive weeks, calling on all persons who have claims against said bank to present the same to the superintendent or his duly authorized agent at a place to be specified in said notice, and to make sworn proof thereof, in form to be fixed by him, within the time specified in said notice, not less than ninety days from the date of the first publication thereof. A copy of such notice shall be mailed to all persons whose names appear as creditors upon the books of the bank.

History: En. Sec. 131, Ch. 89, L. 1925. Bros. Bankers, Inc., 100 M 183, 201, 46 P 2d 697.

References

Powell Building & Loan Assn. v. Larabie

5-1112. (6014.142) **Claims—allowance and rejection.** The superintendent shall reject or allow all claims in the whole or in part, and on each claim allowed shall designate the order of its priority. If a claim is rejected or an order of priority allowed lower than that claimed, notice shall be

given the claimant personally or by registered mail, and an affidavit of the service of such notice, which shall be prima facie evidence thereof, filed in the office of the superintendent. The action of the superintendent shall be final unless an action be brought by the claimant against the bank in the proper court of the county where the bank is located within ninety (90) days after such service to fix the amount of the claim and its order of priority or either. An appeal from the superintendent's allowance, either as to priority or amount, may also be taken to the district court of such county by any party in interest by serving on the superintendent notice thereof, stating the grounds of objection and filing the same in said court within thirty (30) days after allowance. Within five (5) days after such notice, the superintendent shall file in the court, and serve on the appellant, a copy of the claim and his reasons for allowance. The court or judge shall, after five (5) days' notice of time and place of hearing on the issues thus made, hear the proof of the parties and enter judgment reversing, affirming or modifying the superintendent's action.

History: En. Sec. 132, Ch. 89, L. 1927.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

Time within Which Action To Be Commenced

Under this section, one dissatisfied with the action of the superintendent of banks acting as liquidating officer of an insolvent bank in rejecting his alleged preferred claim against the bank must bring action within ninety days after service of notice of such rejection. Notice was mailed to the attorneys of claimant; action was not begun until the expiration of 115 days after acknowledgment of the notice by the attorneys. Held, that notice to his attorneys was notice to claimant, and that the action not having been begun until after the expiration of the ninety-day period, it could not be maintained. Caterpillar Tractor Co. v. Johnson, 99 M 269, 276, 43 P 2d 670.

Trust Funds—Preferences

Where a sum of money was delivered to a bank under a trust agreement providing that interest thereon should be paid to two trustees for the benefit of the prison band, the trustees were, under this section, parties in interest, who could, on the insolvency of the bank, bring action to have the amount of the principal trust fund allowed as a preferred claim, even though the claim was filed with the superintendent of banks in the name of the creator of the trust. Conley v. Johnson, 101 M 376, 382, 54 P 2d 585.

References

Powell Building & Loan Assn. v. Larabie Bros. Bankers, Inc., 100 M 183, 201, 46 P 2d 697; Merchants Nat. Bank Bldg. v. Farmers State Bank of Cut Bank, 111 M 559, 562, 111 P 2d 806.

Collateral References

Banks and Banking⇐80 (4-10).
9 C.J.S. Banks and Banking § 529.
10 Am. Jur. 2d 737, Banks, § 772 et seq.

5-1113. (6014.143) **Payment of claims.** Claims presented to the superintendent prior to the expiration of the time fixed in the notice to creditors therefor, and allowed by him, shall be paid in the order of priority hereinafter fixed. Those filed after such expiration and prior to one year thereafter shall be entitled, after they have been allowed by the superintendent, to share in the distribution of the assets of the bank only to the extent of the assets undistributed in the hands of the superintendent and available for the payment of claims of their order of priority at the time such claims are filed, but as against other claims of their same order of priority, on which dividends have been paid, they shall be entitled to payment in a proportionate amount before further payments are made on such other claims. All claims filed after the expiration of one year following the date fixed in the notice to creditors as the time for presenta-

tion of claims are not entitled to be allowed or paid unless all other creditors' claims of any kind or character, except claims of shareholders, based on stock or assessments paid on stock shall have been fully paid and discharged, and a surplus remains in the hands of the superintendent, and then only from such surplus.

History: En. Sec. 133, Ch. 89, L. 1927.

Collateral References

10 Am. Jur. 2d 740, Banks, § 774 et seq.

5-1114. (6014.144) **Claims—order of payment—priorities.** Except as otherwise provided by the Uniform Commercial Code, the order of payment of the debts of a bank liquidated by the superintendent of banks shall be as follows:

(1) The expense of liquidation, including compensation of agents, employees and attorneys.

(2) All funds of any other bank in process of liquidation by the superintendent of banks and placed on deposit by the superintendent of banks.

(3) All funds held by the bank in trust.

(4) Debts due depositors, holders of cashier's checks, certified checks, drafts on correspondent banks, including protest fees, paid by them on valid checks or drafts presented after closing of the bank, pro rata. All deposit balances of other banks or trust companies, and all deposits of public funds of every kind and character (except those actually placed on special deposit under the statutes providing therefor), including those of the United States, the state of Montana, and every county, district, municipality, political subdivision or public corporation of this state, whether secured or unsecured, or whether deposited in violation of law or otherwise, are included within the terms of this subdivision and take the same priority as debts due any other depositor. All contractual liabilities pro rata. Accrued interest on savings accounts, certificates of deposit or other interest-bearing contracts, up to the time of the closing [of] the bank to be considered as part of the debt due.

(5) Interest on all the foregoing classes of claims without regard to the priority computed from the date of closing of the bank at the rate of seven per centum (7%) per annum.

(6) Unliquidated claims for damages and the like, including claims of stockholders for amounts claimed to have been voluntarily advanced to the bank or paid in by way of special or voluntary or other assessments; provided, however, that the superintendent may, in his discretion, without regard to the priorities herein fixed in subdivisions (3), (4), (5), and (6) of this section, or in preference to the payment of any claims of creditors within these subdivisions, pay off and discharge any lien, claim or charge against the assets or property of the bank in his hands and pay out and expend such sums as he deems necessary for the preservation, maintenance, conservation and protection of any such assets and property, and likewise property on which the bank has liens by mortgage or otherwise; and he may also, in his discretion create a fund or retain in his hands in preference to the claim of any creditors in the subdivisions above-mentioned moneys for the aforesaid purposes.

(7) Collateral which shall have been put up or pledged as security for the payment of bills payable by any bank, or any loans or discounts which shall have been outstanding as rediscounts of any bank prior to the closing thereof, shall not be available to the other creditors of such bank in whole or in part until such bills payable or rediscounts shall have been retired, after which offsets as in this section provided shall be allowed.

(8) Deposits of any person, firm or corporation in a bank which is in the possession of the superintendent, may be offset against any indebtedness, (subject to the conditions of the preceding paragraph of this section), except assessments on stock, due to such bank from such person, firm or corporation. All dividends when declared in favor of any creditor of the bank may be applied, in the discretion of the superintendent, in satisfaction of the indebtedness, if any, due the bank from such creditor.

History: En. Sec. 134, Ch. 89, L. 1927; amd. Sec. 4, Ch. 145, L. 1931; amd. Sec. 11-104, Ch. 264, L. 1963.

Compiler's Note

The compiler has inserted the bracketed word "of" in subdivision (4).

Preferred Claim, What Constitutes

A state bank exercising the powers of a trust company has specific authority to receive moneys in trust and may allow an agreed rate of interest thereon, and where a sum of money was delivered to a bank under a written trust agreement prescribing the manner in which interest on the fund should be administered, it constituted a trust fund and not a mere indebtedness of the bank, and upon insolvency of the bank, gave rise to a preferred claim. Conley v. Johnson, 101 M 376, 54 P 2d 585.

Railroad sending check to local town to meet its shop payroll with accompanying letter stating it was to be considered a special deposit to meet its paymaster's checks, and bank's receipt thereof acknowledged by letter stating the amount had been so credited to the company's account, held, a preference claim in action to compel liquidating officer to allow it as such. Chicago, Milwaukee, St. Paul & Pacific R. Co. v. Larabie Bros. Bankers, Inc., 103 M 126, 134, 61 P 2d 823.

To constitute a preferred claim to funds in an insolvent bank, transaction must create relation of principal and agent between depositor and the bank, and not that of creditor and debtor; and must be proved that assets of bank were augmented by the deposit, and transaction traced into possession of the bank. Chicago, Milwaukee, St. Paul & Pacific R. Co. v. Larabie Bros. Bankers, Inc., 103 M 126, 134, 61 P 2d 823.

References

In re Columbus State Bank, 95 M 332, 334, 26 P 2d 643; Caterpillar Tractor Co. v. Johnson, 99 M 269, 43 P 2d 670; Powell Building & Loan Assn. v. Larabie Bros. Bankers, Inc., 100 M 183, 201, 46 P 2d 697; Binsfield v. Johnson, 6 F Supp 29.

5-1115. (6014.145) **Claims — partial payments.** The superintendent need not await the expiration of the time allowed for filing claims, as fixed in the notice to the creditors, for the payment of dividends, but he may, in his discretion, and if under the circumstances of the particular case he deems it expedient and safe, at any time after taking possession of said bank and prior to the expiration of such period fixed for filing of claims, if he have on hand in cash sufficient funds over and above the expenses of liquidation, make prorata distribution to any class of creditors next entitled thereto, in the order of priority heretofore fixed, making such payment to said creditors as they appear on the books and records of the bank and determining the priority and basing his apportionment on the amount shown to be due by such books and records. At any time after the expiration of the date fixed for the presentation of claims against said bank and from time to time thereafter, when, in his discretion there are sufficient funds available therefor, the superintendent shall, after making

proper provisions for the payment of expenses of liquidation, declare and pay dividends to all creditors of such bank pro rata in the order of their priority. If, after the time fixed for presentation of claims against the bank has expired, it appears that any person, prior to the expiration of said period, or at any other time, has been paid more than the prorata amount due him as compared with the amounts then paid other creditors, nothing more shall be paid such creditors until such time as the payment made other creditors shall place them on equal footing. In calculating dividends, all disputed claims and deposits shall be taken into account and the amount of dividends upon such disputed claims or deposits shall be held by the superintendent until the justice and validity of such claims or deposits shall have been finally determined. Claims against any bank in process of liquidation may be assigned in whole or in part subject to the approval of the state superintendent of banks. Assignments of claims shall be binding upon the superintendent only after the same have been filed and allowed by the superintendent, but not before; and only then subject to the payment of the assignor's liabilities to the bank. Such assignment shall be made by filing written notice, signed by the original claimant, with the superintendent or person in charge of said bank. No assigned claims may be offset against obligations due the bank. A check or draft drawn against any bank closed or taken possession of by the superintendent, whether issued before or after closing thereof, shall not be recognized as a claim against said bank, or as an assignment of any amount, whether protested or not protested.

History: En. Sec. 135, Ch. 89, L. 1927; amd. Sec. 5, Ch. 145, L. 1931.

5-1116. (6014.146) **Deposit of funds in superintendent's hands.** All funds in the hands of the superintendent belonging to any bank in process of liquidation shall be deposited in his name as superintendent in such banks within the state as may be selected and designated by him and subject to his checks as superintendent of banks. Said funds to be preferred and protected as in this act provided.

History: En. Sec. 136, Ch. 89, L. 1927.

5-1117. (6014.147) **Disposition of unclaimed funds.** The superintendent shall certify to the treasurer of the state complete list of funds remaining in his hands uncalled for, which have been left in his hands in his official capacity, in trust for depositors in and creditors of any liquidated bank after they have been held by him for six months from the date of the final liquidation of the institution. Along with this certificate, he shall transmit to the treasurer of the state the funds with accumulated interest thereon, which he has so held in trust for six months. A copy of such certificate shall also be filed with the state auditor, who shall make a record thereof.

The state treasurer shall deposit such funds and interest in the general fund of the state of Montana.

Any depositor or creditor of a liquidated bank who has not been paid the amount standing to his credit as thus certified to the state treasurer, may apply to the state board of examiners for the amount due him. The

depositor or creditor shall make an affidavit and offer proof of his identity and of the amount due him by the liquidated bank. When satisfied as to the correctness of the claim and of the identity of the person, the state board of examiners shall forward it to the auditor, who shall audit the same and if found correct so certify to the state board of examiners, who, if they approve it, shall transmit it to the legislative assembly with a statement of their approval.

History: En. Sec. 137, Ch. 89, L. 1927; amd. Sec. 1, Ch. 143, L. 1961.

Funds Previously Transmitted

Section 2 of Ch. 143, Laws of 1961, provided for disposition of previously transmitted funds as follows: "Section 2. Disposition of unclaimed funds previously transmitted to the state treasurer. All funds and accumulated interest thereon heretofore transmitted to the state treasurer under the provisions of section 5-1117 of Replacement Volume 1, Part 2, of the Revised Codes of Montana, 1947, shall be deposited by the state treasurer in the general fund of the state of Montana."

Collateral References

Banks and Banking ⚖ 81.
9 C.J.S. Banks and Banking § 550.

5-1118. (6014.148) **Disposition of assets remaining after payment of claims.** (a) Whenever the superintendent of banks has paid to each and every depositor and creditor of such bank whose claims shall have been duly approved and allowed as herein provided, the amount due thereon, or made satisfactory adjustment thereof, and shall have made provisions for unclaimed and unpaid deposits and disputed claims and deposits, and shall have paid all the expenses of liquidation, he shall file with the clerk of the district court of the county in which the bank is located, a report of his administration of said trust. If there be remaining assets on hand the superintendent of banks may apply to the judge of said court in open court or in chambers, for an order authorizing him to surrender the remaining assets together with all the stationery, correspondence, books and records, had and kept by the bank while it was a going concern to the directors of said bank in office at the time of closing the same, as trustees for stockholders, or to such other person, if any, as may have been or may be designated as trustee by a majority of the stockholders. The report and petition shall be set for hearing upon such notice as the court may direct and upon hearing had and approval of said report and account being given and the surrender of said assets being made as in the order directed, the superintendent of banks shall be discharged from all further liability or responsibility in connection with the assets and affairs of said bank. The court may, if requested, require such trustees to give bond in such amount as the court may fix, conditioned for the faithful performance of their duties. It shall be the duty of the said trustee or trustees to complete the liquidation of any remaining assets with power to sell and dispose of real and personal property as rapidly as may be and to distribute the proceeds of same among the stockholders as their equities or rights may appear, or to dispose of the same in such other manner as the stockholders shall, by majority action direct, provided, however, the court may upon request of a majority of the stockholders order the superintendent of banks to close up the trust as provided in clause (b) of this section.

(b) If the assets of said bank be insufficient for making payments in full to the depositors and creditors of said bank, then, whenever the superintendent has liquidated all available assets and disbursed the same

as provided by law, the superintendent of banks shall file with the clerk of court of the county in which the bank is located, a final report of his liquidation of such bank. Upon such notice as the court may order, the report shall be set for hearing before the court and if found correct and all funds accounted for, the court shall approve the same. The superintendent of banks may at the same time and in the report make application to the district court of the county in which such bank is located, for an order directing the closing of the trust and upon entry of the order closing the trust the superintendent of banks shall be discharged from all further liability or responsibility in connection with the assets and affairs of said bank, and the charter of said bank shall be forfeited and all the stationery, correspondence, books and records had and kept by the bank while it was a going concern, and deemed by the superintendent of banks to be of no value, may be destroyed, provided, however, that no correspondence or records shall be destroyed for a period of ten years from the date the bank ceased to be a going concern.

(c) On application for orders, as in this section provided, the bank shall be made a party by notice issued on order of the court or judge and served in such manner as the court shall direct and the hearing of applications authorized by this section may be had at any time in court or in chambers, as the court may order, provided there be not less than five (5) days' posted and/or served notice of the hearing.

History: En. Sec. 138, Ch. 89, L. 1927; amd. Sec. 1, Ch. 78, L. 1935.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

References

Merchants Nat. Bank Bldg. v. Farmers State Bank of Cut Bank, 111 M 559, 562, 111 P 2d 806.

5-1119. (6014.149) **Bank in voluntary liquidation may proceed—how and when.** Banks now in process of voluntary liquidation under the terms of section 6109-E, chapter 90 of the session laws of the eighteenth legislative assembly 1923 may continue and complete liquidation of their assets; and chapter 90, section 6109-E Laws of 1923 and each and every provision thereof shall continue in full force and effect for the purpose of enabling banks now in process of liquidation to complete and continue their liquidation in the manner now therein provided.

History: En. Sec. 139, Ch. 89, L. 1927.

Compiler's Note

Section 6109-E, referred to in this section, was added to the Revised Codes of Montana of 1921, by Sec. 4, Ch. 90, Laws of 1923. Chapter 90, Laws of 1923 was repealed by Sec. 144, Ch. 89, Laws of 1927 "except that those parts of Chapter 90 of the Laws of 1923, having to do with voluntary liquidation of banks * * * shall be continued in effect for such purposes only as hereinbefore provided."

Collateral References

Banks and Banking⇦64.
9 C.J.S. Banks and Banking § 469.
10 Am. Jur. 2d 795, Banks, § 826 et seq.

5-1120. (6014.150) **Banks liquidating by receivers.** The liquidation of banks now in process of liquidation by receivers appointed by courts of competent jurisdiction, may be continued and concluded in manner and form as now provided by the laws of Montana, and all of the statutes of Montana in effect at the time of the passage and approval of this act

are continued in force for the purpose of the liquidation of such banks only, provided that any district court having jurisdiction of any such receivership may at any time after this act takes effect, discharge a receiver and order the liquidation to be continued by the superintendent of banks in accordance with the provisions of this act, relative to the liquidation of banks by the superintendent, except that in such case the assets still remaining undistributed and yet to be paid out must be distributed in manner and form and to the same persons who would have been entitled to the same if no change had been made in the personnel of the liquidating officer.

History: En. Sec. 140, Ch. 89, L. 1927.

References

Merchants Nat. Bank Bldg. v. Farmers State Bank of Cut Bank, 111 M 559, 561, 111 P 2d 806.

5-1121. (6014.151) **Effect of act on existing banks.** The powers, privileges, duties and restrictions heretofore conferred and imposed upon any bank or trust company now existing and doing business under the laws of this state, are hereby abridged, enlarged or modified as each particular case may require to conform with the provisions of this chapter.

History: En. Sec. 141, Ch. 89, L. 1927.

5-1122. (6014.152) **Effect of unconstitutionality.** If any part or section of this act shall be adjudged by the courts to be unconstitutional or invalid, the same shall not affect the validity of the act as a whole or any part thereof which can be given effect without the part adjudged to be unconstitutional or invalid.

History: En. Sec. 142, Ch. 89, L. 1927.

5-1123. (6014.153) **Punishment.** When no other punishment is provided herein, any person willfully or knowingly violating any of the provisions of this act, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not more than five hundred dollars ($500.00) or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. The attorney general upon information furnished by the superintendent of banks, shall bring any actions necessary to enforce the provisions of this act.

History: En. Sec. 143, Ch. 89, L. 1927.

5-1124. (6014.154) **Maintenance of offices of consolidated banks.** When any two or more banks located in the same county or in adjoining counties shall consolidate in accordance with the provisions of section 5-1021, the consolidated bank may, if it has a paid-up capital of seventy-five thousand dollars ($75,000.00) or more, upon the written consent of the superintendent of banks and under rules and regulations promulgated by him, maintain and operate offices in the locations of the consolidating banks.

History: En. Sec. 1, Ch. 129, L. 1931.

Construction

This section creates an exception to section 5-1028 and permits branch banking in the limited class of cases therein described. Leuthold v. Camp, 273 F Supp 695.

The word office as used in this section describes a place where banking business is done. Leuthold v. Camp, 273 F Supp 695.

In using the word office without limita-

tion, the legislature specifically granted the authority to engage in banking in two locations under the limitations imposed by this section. Leuthold v. Camp, 273 F Supp 695.

Federal Banks

Banks consolidated under federal authority may maintain two separate banking facilities. Leuthold v. Camp, 273 F Supp 695.

5-1125. (6014.155) **Public deposits in insolvent banks not preferred.** In the liquidation of the affairs of any insolvent bank, claims for public deposits such as those of the state, county, city or town, shall not be given preference over the other claims against such bank. This act shall not affect any bank now in process of liquidation.

History: En. Sec. 1, Ch. 132, L. 1925.

References

State ex rel. Rankin v. Banking Corp. of Montana, 77 M 134, 152, 251 P 151.

5-1126. (6015.1) **Power of closed banks to borrow money from governmental agencies.** Notwithstanding any other provisions of law, the liquidating agents of closed banks shall have the power to borrow money from the Reconstruction Finance Corporation or other governmental agency on behalf of commercial banks, savings banks, trust companies and investment companies now closed or which may hereafter be closed and in liquidation and, as security therefor, to pledge or mortgage the assets and properties thereof, for the purpose of paying depositors or creditors thereof in part or in full, after making application to and obtaining the approval of the superintendent of banks and the district court of the county in which said bank, trust or investment company is located, upon such court proceedings had and obtained as are prescribed in section 5-1107.

History: En. Sec. 1, Ch. 3, Ex. L. 1933.

5-1127. (6016.1) **Nonassessable preferred stock — authorization for issuing.** Any domestic commercial bank, savings bank, trust company or investment company may amend its articles of incorporation or articles of agreement by providing for the issuance of nonassessable preferred stock, and any such bank or company hereafter formed may provide in its articles for the issuance of such stock. Such amendment may be made by the adoption of a resolution by a vote of persons holding a majority of the stock of such corporation at a meeting held after thirty days' notice stating the purpose and the time and place of holding such meeting, either mailed or published in the manner provided in section 5-215, and by filing a certified copy of such resolution in the office of the county clerk and recorder of the county in which the principal place of business is located and a certified copy thereof in the office of the secretary of state, certified and authenticated as provided in section 5-216.

History: En. Sec. 1, Ch. 15, Ex. L. 1933.

Collateral References

Banks and Banking⇐39.
9 C.J.S. Banks and Banking § 63.
10 Am. Jur. 2d 83, Banks, § 73.

Right of holders of preferred stock in respect of dividends. 6 ALR 802; 67 ALR 765; 98 ALR 1526 and 133 ALR 653.

Power to create preferred stock as against existing preferred stock. 44 ALR 72.

5-1128. (6016.2) **Preferred stock not subject to double liability or other responsibility.** Such preferred stock shall not impose any double

liability upon the subscriber or holder or subject the holder to responsibility for any contract, debt or engagement of the issuing corporation.

History: En. Sec. 2, Ch. 15, Ex. L. 1933.

5-1129. (6016.3) **Manner of issuing preferred stock.** Such preferred stock may be issued and sold upon such terms and conditions as may be approved by the superintendent of banks, or as may be required for the purchase of such stock by the Reconstruction Finance Corporation or other agency or quasi-agency of the federal government.

History: En. Sec. 3, Ch. 15, Ex. L. 1933.

5-1130. (6017.1) **Borrowing money for capital purposes—status of capital.** Notwithstanding any other provision of law any commercial bank, savings bank, trust company or investment company, now in existence or which may be hereafter formed, shall have the power to borrow money for capital purposes upon such terms and conditions as may be approved by the superintendent of banks, and for this purpose may issue capital notes or debentures therefor, such notes or debentures to be subordinate in right of payment to the payment in full of all deposits of such bank, savings bank, trust company or investment company. The amount of money so borrowed shall be considered as capital for the purpose of determining the maximum amount of money that may be loaned by such bank, savings bank, trust company or investment company to any person, copartnership or corporation, and for the purpose of determining the maximum amount of money which such bank may borrow, and for all other purposes of bank capital as may be required by law, except that the money so borrowed shall not in any event be considered in ascertaining the value and assessment of shares of any bank for the purpose of taxation.

History: En. Sec. 1, Ch. 16, Ex. L. 1933; amd. Sec. 1, Ch. 11, L. 1967.

Collateral References

Banks and Banking⇨36-38.

9 C.J.S. Banks and Banking § 58.

5-1131. (6018.1) **Financial institutions authorized to obtain insurance and make loans when approved by federal housing administrator.** Notwithstanding any other provisions of the law of this state restricting the amount of any loan in relation to the value of the real estate, and/or restricting the term of any such loan, and/or restricting the rate of interest on any such loan, it shall be lawful for any corporation, bank, trust company, insurance company, investment company, and any other financial institution, which has been approved as a mortgagee by the federal housing administrator, to obtain insurance, and to make such loans secured by real estate as the federal housing administrator insures or makes a commitment to insure.

History: En. Sec. 1, Ch. 8, L. 1935; amd. Sec. 1, Ch. 25, L. 1937.

5-1132. (6018.2) **Federal housing securities eligible collateral.** Wherever collateral must or may be furnished by any depository in the state of Montana as security for the deposit of any funds whatsoever, or wherever collateral must or may be deposited with any official of the state of Mon-

tana pursuant to any statute of this state, mortgages insured and debentures issued by the federal housing administrator shall be considered eligible collateral for such purposes.

History: En. Sec. 2, Ch. 25, L. 1937.

Collateral References

Depositaries⚿7.
26A C.J.S. Depositaries § 9.

CHAPTER 12

FEDERAL DEPOSIT INSURANCE CORPORATION AID AVAILABLE TO BANKING INSTITUTIONS

Section 5-1201. Banking institution defined.
5-1202. Banking institutions may take advantage of federal deposit insurance corporation aid.
5-1203. Appointment of the corporation as agent.
5-1204. Subrogation of corporation to certain rights.
5-1205. Examinations by the corporation may be accepted—effect of act.
5-1206. Closed banking institutions may borrow from the corporation.

5-1201. Banking institution defined. The term "banking institution," as used in this act shall be construed to mean any bank, trust company, bank and trust company, stock savings bank or mutual savings bank, which is now or may hereafter be organized under the laws of this state.

History: En. Sec. 1, Ch. 197, L. 1937.

Collateral References

Banks and Banking⚿2; United States ⚿53.
9 C.J.S. Banks and Banking § 1.

5-1202. Banking institutions may take advantage of federal deposit insurance corporation aid. Any banking institution now or hereafter organized under the laws of this state is hereby empowered, on the authority of its board of directors, or a majority thereof, to enter into such contracts, incur such obligations and generally to do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to take advantage of any and all memberships, loans, subscriptions, contracts, grants, right or privileges, which may at any time be available or inure to banking institutions or to their depositors, creditors, stockholders, conservators or liquidators, by virtue of those provisions of section 12B of the Federal Reserve Act, as amended, which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits, or of any other provisions of that or of any other act or resolution of Congress to aid, regulate or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor; also, to subscribe for and acquire any stock, debentures, bonds or other types of securities of the Federal Deposit Insurance Corporation, and to comply with the lawful regulations and requirements from time to time issued or made by such corporation.

History: En. Sec. 2, Ch. 197, L. 1937.

Compiler's Note

Section 12B of the Federal Reserve Act, referred to in this section, was withdrawn and made a separate act by Act September 21, 1950, ch. 967, § 1, to be known as the Federal Deposit Insurance Act. This new act is compiled in the United States Code as Tit. 12, §§ 1811-1831.

Collateral References

Banks and Banking⚿15.
9 C.J.S. Banks and Banking §§ 14-16, 18-34.

5-1203. Appointment of the corporation as agent. In the event any banking institution, the deposits in which are in any extent insured by the Federal Deposit Insurance Corporation created by section 12B of the Federal Reserve Act as amended, is closed on account of inability to meet the demands of its creditors, the superintendent of banks may appoint said corporation agent, without bond, to assist him or act for him in the liquidation of such banking institution.

History: En. Sec. 3, Ch. 197, L. 1937.

Compiler's Note

See Compiler's Note under sec. 5-1202.

Collateral References

Banks and Banking⇨15, 63½.

9 C.J.S. Banks and Banking §§ 14-16, 28-34, 87-107, 123-130, 422-447, 449-465.

5-1204. Subrogation of corporation to certain rights. Whenever any banking institution shall have been closed as aforesaid, and said Federal Deposit Insurance Corporation shall pay or make available for payment the insured deposit liabilities of such closed institution, said corporation, whether or not it shall have been appointed agent of the superintendent of banks in the liquidation of such closed banking institution, as herein provided, shall be and become subrogated by operation of law to all rights against such closed banking institution of each owner of a claim for deposit to the extent now or hereafter necessary to enable the Federal Deposit Insurance Corporation, under federal law, to make insurance payments available to depositors of closed insured banks.

History: En. Sec. 4, Ch. 197, L. 1937.

5-1205. Examinations by the corporation may be accepted—effect of act. The superintendent of banks is authorized to accept, in his discretion, in lieu of any examination authorized by the laws of this state to be conducted by his department of a banking institution the examination that may have been made of same within a reasonable period by the Federal Deposit Insurance Corporation; provided, a signed copy of said examination is furnished to said superintendent of banks. Said superintendent of banks may, also in his discretion, accept any report relative to the condition of a banking institution which may have been obtained by said corporation within a reasonable period, in lieu of a report authorized by the laws of this state to be required of such institution by his department; provided a copy of such report is furnished to said superintendent of banks, and may in his discretion disclose to said corporation, or any official or examiner thereof, any information possessed by the office of said superintendent of banks with reference to the conditions or affairs of any such insured institution.

Said superintendent of banks may furnish to said corporation, or to any official or examiner thereof, a copy or copies of any or all examinations made of any such banking institutions and of any or all reports made by same.

Nothing in this section shall be construed to limit the duty of any banking institution in this state, deposits in which are to any extent insured under the provisions of section 12B of the Federal Reserve Act, as amended, or of any amendment of or substitution for the same, to comply with the provisions of said act, its amendments or substitutions, or the require-

ments of said corporation relative to examinations and reports, nor to limit the powers of the superintendent of banks with reference to examinations and reports under existing law.

History: En. Sec. 5, Ch. 197, L. 1937.

Compiler's Note

See Compiler's Note under sec. 5-1202.

Collateral References

Banks and Banking⇐15, 17.

9 C.J.S. Banks and Banking §§ 14-16, 18-34, 35.

5-1206. Closed banking institutions may borrow from the corporation. Any banking institution, which is now or may hereafter be closed on account of inability to meet the demands of its depositors or by action of the superintendent of banks or by action of its directors or in the event of its insolvency or suspension, the superintendent of banks or his agent, with the permission of the court having jurisdiction thereof, may borrow from said corporation and furnish any part or all of the assets of said institution to said corporation as security for a loan from same. Said superintendent of banks upon the order of a court of record of competent jurisdiction may sell to said corporation any part or all of the assets of such institution. The provisions of this section shall not be construed to limit the power of any banking institution, or the superintendent of banks to pledge or sell assets in accordance with any existing law.

History: En. Sec. 6, Ch. 197, L. 1937.

Collateral References

Banks and Banking⇐15, 76.

9 C.J.S. Banks and Banking §§ 14-16, 490, 505.

CHAPTER 13

MORRIS PLAN COMPANIES

Section 5-1301. "Morris plan company"—meaning of term.
5-1302. Establishment of Morris plan company—procedure.
5-1303. Contents of application for articles of incorporation.
5-1304. Population, capital and surplus requirements for organizing.
5-1305. Shares of stock—par value—payment and deposit of capital required before doing business.
5-1306. Name of company.
5-1307. Powers of Morris plan companies.
5-1308. Limitation of powers relating to deposits.
5-1309. Limit on amount of loan to one person and period of loan—deposit of funds with other corporation.
5-1310. Residence requirements of directors.
5-1311. Supervision of state banking department.

5-1301. (6109.1) **"Morris plan company"—meaning of term.** The term "Morris plan company" as used in this act means any corporation formed under the provisions of this act.

History: En. Sec. 1, Ch. 119, L. 1925.

Collateral References

Banks and Banking⇐310.

9 C.J.S. Banks and Banking § 1045.

5-1302. (6109.2) **Establishment of Morris plan company—procedure.** Any number of adult persons, residents and not less than five, may associate to establish a Morris plan company under this act. The incorporators shall execute a certificate of incorporation or application for articles of incorporation, which shall be acknowledged by at least three of the sub-

scribers thereto before a notary public, and they shall also make and subscribe an oath or affirmation before him to be endorsed on the said certificate that the said statements therein contained are true. The said certificate accompanied by proof of publication of notice as hereinafter provided shall then be presented to the governor of the state, who shall examine the same and if he finds it to be in proper form and within the purposes named in this act, he shall approve thereof, and endorse his approval thereon, and direct articles of incorporation to issue in the usual form incorporating the subscribers and their associates and successors into a body corporate of the name chosen, and the said certificate shall be recorded in the office of the secretary of the state, in a book to be kept by him for that purpose, and he shall forthwith furnish to the state banking department an abstract therefrom, showing the name, location, amount of capital stock, and the name and address of the treasurer of such corporation; the said original certificate with all its endorsements shall then be recorded in the office for the recording of deeds in and for the county where the business of the corporation is to be carried on, and from thenceforth the subscribers and their associates and successors shall be a corporation for the purposes and upon the terms named in the said charter. Certified copies of such certificate, duly certified by the secretary of this state, shall be conclusive evidence in all courts of this state of the existence of such corporation and of every other matter or thing which could be proved by the production of the original certificate.

History: En. Sec. 2, Ch. 119, L. 1925.

Collateral References

Banks and Banking⇨312.
9 C.J.S. Banks and Banking § 1046.

5-1303. (6109.3) **Contents of application for articles of incorporation.** The certificate of incorporation or application for articles of incorporation shall specify:

1. The name (subject to the approval of the secretary of this state).
2. Location or place of business, particularly designating the county or city.
3. Amount of capital stock and number of shares into which divided.
4. The names and places of residences of the incorporators, and the number of shares subscribed by each.
5. A statement that such certificate is made to enable the persons named to form a Morris plan company under this act.
6. The term for which it is to exist.

History: En. Sec. 3, Ch. 119, L. 1925.

Collateral References

Banks and Banking⇨312.
9 C.J.S. Banks and Banking § 1046.

5-1304. (6109.4) **Population, capital and surplus requirements for organizing.** No corporation shall be organized under this act to do business in a city having a population of less than twenty thousand inhabitants, and that such corporation shall have an aggregate amount of capital stock of not less than twenty-five thousand dollars, and a surplus of 10% of the paid-in capital stock.

History: En. Sec. 4, Ch. 119, L. 1925.

5-1305. (6109.5) **Shares of stock—par value—payment and deposit of capital required before doing business.** The capital stock of any such corporation shall be divided into shares of the par value of one hundred dollars each. All of the capital stock shall be paid in cash to the treasurer of the corporation, who shall deposit the same in some bank approved by the superintendent of banks, before any such corporation shall be authorized to transact any business other than such as relates to its formation and organization, and such payment shall be certified to the state banking department under oath by the president and manager of said corporation.

History: En. Sec. 5, Ch. 119, L. 1925.

5-1306. (6109.6) **Name of company.** Every corporation incorporated under this act shall be known as a Morris plan company, and may use the words "Morris Plan Company" as part of its corporate title.

History: En. Sec. 6, Ch. 119, L. 1925.

5-1307. (6109.7) **Powers of Morris plan companies.** Every corporation formed under the provisions of this act shall, from the date of the charter of incorporation issued thereto, be a body corporate, but shall transact no business except such as may be incidental to the purpose of its organization until all of the capital has been paid in as hereinbefore provided, and shall have the following powers:

1. To have succession by the name designated in its certificate of incorporation for the term of twenty-five years from the date of incorporation, unless sooner dissolved.

2. To sue and be sued, to appear and defend in all actions and proceedings under its corporate name and to the same extent as a natural person.

3. To have a common seal and alter the same at pleasure.

4. To elect or appoint all necessary officers, agents, and servants, define their duties and obligations, fix their compensation, dismiss them, fill vacancies and require bonds.

5. To make, amend and repeal bylaws and regulations, not inconsistent with law, for its own government, for the orderly conduct of its affairs and the management of its property, for determining the manner of calling and conducting its meetings, the tenure of office of the several officers, and such others as shall be necessary or convenient for the accomplishment of its purposes, which by laws and amendments thereto must be approved by the superintendent of banks.

6. To lend money and to deduct interest therefor in advance at lawful rates of interest and in addition to require and to receive uniform weekly or monthly installments on its certificates of indebtedness purchased by the borrower simultaneously with the said loan transaction, or otherwise, and pledged with the corporation as security for the said loan, with or without an allowance of interest on such installments, provided, however, that no such corporation shall charge or receive interest in excess of the legal rate of interest provided for in the state of Montana.

7. To buy, sell, or negotiate bonds, notes and choses in action and to sell or negotiate evidences or certificates of indebtedness or investment of

the corporation calling for the payment of money at any time, either fixed or uncertain and to receive payments therefor in installments or otherwise.

8. To purchase or otherwise acquire and to sell and negotiate drafts and acceptances drawn in connection with the sale of merchandise on account of the purchase price thereof and to take from the acceptors or holders of such drafts and acceptances as security therefor, with or without other collateral, choses in action or other evidences of indebtedness issued by it and to be paid in uniform monthly, weekly or other periodical installments.

9. To charge for a loan made pursuant to this action one dollar for each fifty dollars or fraction thereof loaned for expenses incurred in making the loan; no charge shall be collected unless a loan shall have been made.

History: En. Sec. 7, Ch. 119, L. 1925.

9 C.J.S. Banks and Banking § 1054 et seq.

Collateral References

Banks and Banking⇐315.

5-1308. (6109.8) **Limitation of powers relating to deposits.** The power conferred upon corporations organized under this act by the foregoing action shall not be construed as authorizing such corporation to receive deposits of money subject to check, payable on demand, or payable unconditionally at a fixed time.

History: En. Sec. 8, Ch. 119, L. 1925.

5-1309. (6109.9) **Limit on amount of loan to one person and period of loan—deposit of funds with other corporation.** No Morris plan company shall:

(a) Make any loan to one person, firm or corporation for more than ten per centum of the amount of the capital and surplus of such Morris plan company.

(b) Make any loan under the provisions of this act for a longer period than one year from the date thereof.

(c) Deposit any of its funds with any other corporation unless such corporation has been designated as such depository by a vote of the majority of the directors, exclusive of any director who is an officer, director or trustee of the depository so designated, present at a meeting duly called at which a quorum is in attendance. Such bank must first be approved by the superintendent of banks as a depository bank for such company.

History: En. Sec. 9, Ch. 119, L. 1925.

5-1310. (6109.10) **Residence requirements of directors.** At least three-fourths of the directors of any Morris plan company shall be residents of the state of Montana.

History: En. Sec. 10, Ch. 119, L. 1925.

9 C.J.S. Banks and Banking §§ 1051, 1053.

Collateral References

Banks and Banking⇐314.

5-1311. (6109.11) **Supervision of state banking department.** Every corporation incorporated under the provisions of this act shall report to, and be subject to, the supervision of the state banking department.

History: En. Sec. 11, Ch. 119, L. 1925.

CHAPTER 14

UNIFORM COMMON TRUST ACT

Section 5-1401. Common trust fund authorized.
5-1402. Accounting.
5-1403. Uniformity in interpretation.
5-1404. Short title.
5-1405. Severability.
5-1406. Application of act.

5-1401. Common trust fund authorized. Any bank or trust company qualified to act as fiduciary in this state may establish common trust funds for the purpose of furnishing investments to itself as fiduciary, or itself and others, as co-fiduciaries; and may, as such fiduciary or co-fiduciary, invest funds which it lawfully holds for investment in interests in such common trust fund, if such investment is not prohibited by the instrument, judgment, decree or order creating such fiduciary relationship, and if in the case of co-fiduciaries, the bank or trust company procures the consent of its co-fiduciary or co-fiduciaries to such investment: Provided, that any bank or trust company qualified to act as fiduciary in this state, which is not a member of the federal reserve system, shall, in operation of such common trust fund, comply with the rules and regulations as made from time to time by the state examiner and ex officio superintendent of banks and he is hereby authorized and empowered to make such rules and regulations as he may deem necessary and proper in the premises.

History: En. Sec. 1, Ch. 64, L. 1955.

NOTE.—Uniform State Law. Except for the proviso in the above section, sections 5-1401 through 5-1406 constitute the "Uniform Common Trust Fund Act" approved by the National Conference of Commissioners on Uniform State Laws in 1938 and adopted in Arizona, Arkansas, California, Colorado, District of Columbia, Florida, Idaho, Illinois, Iowa, Kansas, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, Wisconsin and Wyoming.

Collateral References

Banks and Banking⇨86, 87.
9 C.J.S. Banks and Banking § 157.

Construction of Uniform Common Trust Act. 64 ALR 2d 268.

5-1402. Accounting. Unless ordered by a court of competent jurisdiction the bank or trust company operating such common trust funds is not required to render a court accounting with regard to such funds; but it may, by application to the district court, secure approval of such an accounting on such conditions as the court may establish.

History: En. Sec. 2, Ch. 64, L. 1955.

5-1403. Uniformity in interpretation. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 3, Ch. 64, L. 1955.

5-1404. Short title. This act may be cited as the Uniform Common Trust Act.

History: En. Sec. 4, Ch. 64, L. 1955.

5-1405. Severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

History: En. Sec. 5, Ch. 64, L. 1955.

5-1406. Application of act. This act shall apply to fiduciary relationships in existence at the time this act takes effect or thereafter established.

History: En. Sec. 7, Ch. 64, L. 1955.

TITLE 6

BONDS AND UNDERTAKINGS

Chapter 1. Official bonds of state officers (6-101 to 6-104 Repealed), 6-105 to 6-108.
2. Official bonds of county officers (6-201, 6-202 Repealed), 6-203 to 6-209.
3. General provisions relative to official bonds, 6-301 to 6-337.
4. Public works contractor's bond, 6-401 to 6-404.
5. Public bidder's bond, 6-501.
6. Official bonds of city or town officers and employees, 6-601 to 6-608.

CHAPTER 1

OFFICIAL BONDS OF STATE OFFICERS

Section 6-101 to 6-104. Repealed.
6-105. Controller to purchase all bonds—exemptions—individual or group bonds—approval of form.
6-106. All officers and employees to be bonded—determination of amounts of bonds—competitive bids.
6-107. Companies authorized to execute bonds.
6-108. Proration of bond premiums—payment of prorated amounts.

6-101 to 6-104. (464, 465, 469, 470) **Repealed—Chapter 177, Laws of 1965.**

Repeal

These sections (Secs. 1051, 1052, Pol. C. 1895; Secs. 1, 2, Ch. 229, L. 1921; Sec. 1, Ch. 161, L. 1937), relating to official bonds of state officers, were repealed by Sec. 51, Ch. 177, Laws 1965. For new provisions relating to bonds for state officers and employees, see sec. 6-105 et seq.

6-105. Controller to purchase all bonds—exemptions—individual or group bonds—approval of form. The state controller shall purchase all surety bonds for state officers and employees. As used in this act, the term "state officers and employees" does not include notaries public, supreme court justices, district court judges or members and employees of the legislative assembly. A bond may cover an individual officer or employee or group of officers and employees. The form of all bonds shall be prescribed by the controller, subject to the approval of the attorney general.

History: En. Sec. 1, Ch. 177, L. 1965.

Cross-Reference

Notaries public, bond, sec. 56-110.

Collateral References

States⇐48.

81 C.J.S. States § 76.

43 Am. Jur. 173, Public Officers, §§ 394 et seq.

Liability of public officer or his bond for the defaults of subordinates. 1 ALR 222; 102 ALR 174 and 116 ALR 1064; also 71 ALR 2d 1140.

Liability of sureties on bond of public officer for acts or defaults occurring after termination of office or principal's incumbency. 81 ALR 10.

Liability of sureties on bond of public officer as affected by fact that it was not signed by him. 110 ALR 959.

Liability of public officer and his sureties in respect of payments made without compliance with procedure prescribed for payment of claims. 146 ALR 762.

Constitutional, statutory, or charter provision as to time of taking oath of office and giving official bond as mandatory or directory. 158 ALR 639.

Public officer's bond as subject to forfeiture for malfeasance in office. 4 ALR 2d 1348.

DECISIONS UNDER FORMER LAW

Filing Bond with Secretary of State

A state officer, holding over for failure of the senate to confirm his successor, but claiming to hold by virtue of a reappointment, qualified anew to the extent of filing his official oath and procuring an extension certificate of his original bond for the new term, but failed to file the bond with the secretary of state. Where the officer failed to qualify for his alleged second term as required by law, his successor having been duly appointed, confirmed and qualified, the latter was entitled to the office. State ex rel. Nagle v. Stafford, 99 M 88, 93, 43 P 2d 636.

6-106. All officers and employees to be bonded—determination of amounts of bonds—competitive bids. All state officers and employees shall be bonded. Before determining the amount for which a state officer or employee shall be bonded, the controller shall consult with the head of the institution or agency involved and the head of the agency responsible for the examination or postauditing of state agencies. The amount for which a state officer or employee shall be bonded shall be based on the amount of money or property handled and the opportunity for defalcation. If a state officer or the head of an agency, board or department feels that the amount of the bond set by the controller is excessive or inadequate, he may appeal to the board of examiners, whose decision shall be final. All bonds shall be purchased by competitive bid.

History: En. Sec. 2, Ch. 177, L. 1965.

6-107. Companies authorized to execute bonds. Bonds purchased by the state controller shall be executed by responsible insurance or surety companies admitted and authorized to execute surety bonds in this state.

History: En. Sec. 3, Ch. 177, L. 1965.

6-108. Proration of bond premiums—payment of prorated amounts. The state controller shall prorate the premiums for bonds covering more than one state agency or institution among the state agencies and institutions whose officers and employees are covered. Such proration shall be based on the risk of bonding the officers and employees of each agency or institution. The controller shall order payment of the prorated amount from moneys which are available to such agencies or institutions for the payment of general administrative expenses.

History: En. Sec. 4, Ch. 177, L. 1965.

Saving Clause

Section 5 of Ch. 177, Laws 1965 read "This act shall not affect the validity of bonds in effect on the effective date of this act."

CHAPTER 2

OFFICIAL BONDS OF COUNTY OFFICERS

Section 6-201. Repealed.
6-202. Repealed.
6-203. Purchase of bonds—individual and blanket bonds.
6-204. Persons to be bonded—amounts—competitive offers solicited.
6-205. State examiner to determine adequacy of amount.
6-206. Companies authorized to execute bonds.
6-207. Premiums charged against budgets.
6-208. Approval of form of bonds—filing and recording.
6-209. Conditions and signature of group bonds.

6-201, 6-202. (466, 467) **Repealed—Chapter 68, Laws of 1967.**

Repeal

These sections (Secs. 3, 4, Ch. 229, L. 1921; Sec. 1, Ch. 66, L. 1939), relating to the official bonds of county officers, were repealed by Sec. 10, Ch. 68, Laws 1967. For new provisions relating to bonds for county officers and employees, see sec. 6-203 et seq.

6-203. Purchase of bonds—individual and blanket bonds. The board of county commissioners shall purchase all surety bonds for county officers and employees. A bond may cover an individual officer or employee or a blanket bond may cover all officers and employees, or any group or combination of county officers and employees.

History: En. Sec. 1, Ch. 68, L. 1967.

Cross-References

Court may require additional bond, sec. 91-618.

Public administrator, bond, sec. 91-602.

Superintendent of schools, bond, sec. 75-1505.

Collateral References

Counties⇐64; Officers⇐88.

20 C.J.S. Counties §§ 102, 104.

43 Am. Jur. 179, Public Officers, §§ 404, 405.

Mandamus to compel approval of official bond. 92 ALR 1211.

Approval of or refusal to approve bond of public officer as subject of judicial review. 134 ALR 1359.

Public officer's bond as subject to forfeiture for malfeasance in office. 4 ALR 2d 1348.

Liability on bond of clerk of court, county clerk, or prothonotary for negligent or wrongful acts of deputies or assistants. 71 ALR 2d 1140.

6-204. Persons to be bonded—amounts—competitive offers solicited. All elected and appointed county officers and employees shall be bonded. The amount for which a county officer or employee shall be bonded shall be based on the amount of money or property handled and the opportunity for defalcation. The board of county commissioners shall actively solicit offers on a competitive basis from available qualified insurance or surety companies before purchasing the bonds.

History: En. Sec. 2, Ch. 68, L. 1967.

6-205. State examiner to determine adequacy of amount. The amount for which any county officer or employer or group of officers or employees shall be bonded shall be subject to the supervision of the state examiner. If the state examiner determines that the amount of the bond is inadequate, he may require the board of county commissioners to purchase an adequate bond.

History: En. Sec. 3, Ch. 68, L. 1967.

6-206. Companies authorized to execute bonds. Bonds purchased by the board of county commissioners shall be executed by responsible insurance or surety companies authorized and admitted to execute surety bonds in this state.

History: En. Sec. 4, Ch. 68, L. 1967.

6-207. Premiums charged against budgets. The premiums for all surety company bonds shall be a proper charge against the budgets of the county general fund or against the budget or budgets of those county funds where the officer or employee renders service.

History: En. Sec. 5, Ch. 68, L. 1967.

6-208. Approval of form of bonds—filing and recording. The form of bonds for county officers and employees must be approved by the county attorney and filed and recorded in the office of the county clerk and recorder.

History: En. Sec. 6, Ch. 68, L. 1967.

6-209. Conditions and signature of group bonds. All official bonds covering a group of county officers or employees shall be made upon the same conditions as are required of a principal under section 6-306, R. C. M. 1947, except that the bond need not be signed by each officer or employee.

History: En. Sec. 7, Ch. 68, L. 1967,

Compiler's Note

Section 8 of Chapter 68, Laws 1967, provided: "This act shall not affect the validity of bonds in effect on the effective date of this act."

CHAPTER 3

GENERAL PROVISIONS RELATIVE TO OFFICIAL BONDS

Section 6-301. Time for filing bond.
6-302. Repealed.
6-303. Record of official bonds.
6-304. Approval must be endorsed on bond.
6-305. Bond not to be filed before approval.
6-306. Conditions—signatures and sureties.
6-307. Qualifications of sureties.
6-308. When sureties liable for less than full amount.
6-309. Custody of official bonds.
6-310. Form of bonds.
6-311. Extent of sureties' liability—construction of bonds.
6-312. Extent of sureties' liability—duties subsequently imposed.
6-313. Suit on bonds.
6-314. Suit on bonds—successive suits.
6-315. Defects not to affect liability.
6-316. Defective official bonds.
6-317. Insufficiency of sureties.
6-318. Form of additional bond.
6-319. Force of original bond.
6-320. Liability of officers and sureties.
6-321. Separate judgments on bonds.
6-322. Contribution between sureties.
6-323. Discharge of sureties.
6-324. Vacancies—bond of appointee—persons appointed to fill vacancies.
6-325. Release of sureties.
6-326. Proceedings to obtain release from bond—statement—notice.
6-327. Failure to file new bond vacates office—when.
6-328. Liability of sureties where new bond is given.
6-329. Amount of new undertaking—how determined.
6-330. Effect of discharge of sureties.
6-331. Applicable to what bonds.
6-332. Bonds of receivers, assignees, etc.
6-333. Actions on official bonds—notice of pendency.
6-334. Actions on official bonds—judgment lien on property of defendants.
6-335. Bonds of deputies, clerks, etc.
6-336. Repealed.
6-337. Actions to compel specific performance, etc.

6-301. (468) **Time for filing bond.** Every official bond must be filed in the proper office within the time prescribed for filing the oath, unless otherwise expressly provided by statute.

History: En. Sec. 1050, Pol. C. 1895; re-en. Sec. 377, Rev. C. 1907; re-en. Sec. 468, R. C. M. 1921. Cal. Pol. C. Sec. 947.

City Treasurer

This article was intended to include the bonds of city treasurers. City of Philipsburg v. Degenhart, 30 M 299, 302, 76 P 694.

Construction of Section

The provision of this section is mandatory. State ex rel. Wallace v. Callow, 78 M 308, 324, 254 P 187.

References

Maddox v. Board of State Canvassers, 116 M 217, 224, 149 P 2d 112.

Collateral References

Officers⇐37.

6-302. (471) **Repealed—Chapter 68, Laws of 1967.**

Repeal

This section (Sec. 1053, Pol. C. 1895; Sec. 1, p. 79, L. 1899; Sec. 1, Ch. 173, L. 1947), relating to judicial approval of official bonds, was repealed by Sec. 10, Ch. 68, Laws 1967. For new provisions relating to bonds for county officers and employees, see sec. 6-203 et seq.

6-303. (472) **Record of official bonds.** Official bonds must be recorded in a book kept for the purpose, and entitled "Record of Official Bonds."

History: En. Sec. 1054, Pol. C. 1895; re-en. Sec. 381, Rev. C. 1907; re-en. Sec. 472, R. C. M. 1921. Cal. Pol. C. Sec. 951.

References

State ex rel. Wallace v. Callow, 78 M 308, 324, 254 P 187; State ex rel. Nagle v. Stafford, 99 M 88, 43 P 2d 636.

Collateral References

Officers⇐37.
67 C.J.S. Officers § 39.

6-304. (473) **Approval must be endorsed on bond.** The approval of every official bond must be endorsed thereon and signed by the officer approving the same.

History: En. Sec. 1055, Pol. C. 1895; re-en. Sec. 382, Rev. C. 1907; re-en. Sec. 473, R. C. M. 1921. Cal. Pol. C. Sec. 952.

Bonds of County Commissioners

Former section 16-904, requiring inter alia the furnishing of an official bond by county commissioners before assuming office, and imposing upon the district judge the duty of examining such bond on the first day of each term of court, was not open to the construction that county commissioners might file their bonds regardless of approval, and that the judge at the next session of court approve them is sufficient, such a construction being inconsistent with the provisions of this section having to do generally with the giving of official bonds on qualifying for county office. State ex rel. Wallace v. Callow, 78 M 308, 324, 254 P 187.

Constable's Bond

While the official bond of a constable is required by this section to be approved by the district judge before filing with the county recorder, where, though properly filed, it was not so approved, and the officer assumed office and performed his duties during his entire term with the acquiescence of the surety, absence of approval by the judge will be held to have been a mere defect, which under section 6-315, does not render the bond void so as to discharge the surety from liability. Stabler v. Adamson, 73 M 490, 498, 237 P 483.

References

State ex rel. Nagle v. Stafford, 99 M 88, 43 P 2d 636.

6-305. (474) **Bond not to be filed before approval.** No officer with whom any official bond is required to be filed must file such bond until approved.

History: En. Sec. 1056, Pol. C. 1895; re-en. Sec. 383, Rev. C. 1907; re-en. Sec. 474, R. C. M. 1921. Cal. Pol. C. Sec. 953.

Bonds of County Commissioners

Former section 16-904, requiring inter alia the furnishing of an official bond by county commissioners before assuming office, and imposing upon the district judge the duty of examining such bond on the first day of each term of court, was not open to the construction that

county commissioners might file their bonds regardless of approval, and that the judge at the next session of court approve them is sufficient, such a construction being inconsistent with the provisions of this section having to do generally with the giving of official bonds on qualifying for county office. State ex rel. Wallace v. Callow, 78 M 308, 324, 254 P 187.

Constable's Bond

While the official bond of a constable is required by this section to be approved by the district judge before filing with the county recorder, where, though properly filed, it was not so approved, and the officer assumed office and performed his duties during his entire term with the acquiescence of the surety, absence of approval by the judge will be held to have been a mere defect, which under section 6-315, does not render the bond void so as to discharge the surety from liability. Stabler v. Adamson, 73 M 490, 498, 237 P 483.

References

State ex rel. Nagle v. Stafford, 99 M 88, 43 P 2d 636.

6-306. (475) **Conditions—signatures and sureties.** The condition of every official bond must be that the principal shall well, truly, and faithfully perform all official duties then required of him by law, and also such additional duties as may be imposed on him by any law of the state subsequently enacted, and that he will account for and pay over and deliver to the person or officer, entitled to receive the same, all moneys or other property that may come into his hands as such officer. The principal and sureties upon any official bond are also in all cases liable for the neglect, default, or misconduct in office of any deputy, clerk, or employee, appointed or employed by such principal.

All official bonds must be signed and executed by the principal and two or more sureties, or by the principal, and one or more surety companies organized as such under the laws of this state, or licensed to do business herein.

History: Ap. p. Sec. 1057, Pol. C. 1895; amd. Sec. 2, p. 79, L. 1899; re-en. Sec. 384, Rev. C. 1907; re-en. Sec. 475, R. C. M. 1921. Cal. Pol. C. Sec. 954.

City Treasurer

The official bond of a city treasurer must be conditioned in accordance with this section. City of Philipsburg v. Degenhart, 30 M 299, 302, 76 P 694.

County Treasurer

The obligation to account for all moneys coming into his hands by virtue of his office is imposed upon a county treasurer by this section, as one of the conditions of his official bond. Gallatin County v. United States Fidelity & Guaranty Co., 50 M 55, 62, 144 P 1085, distinguished in 89 M 342, 353, 297 P 498. See also, as to duty of a sheriff, Well-Dickey Co. v. Benjamin, 74 M 170, 175, 239 P 77.

Deputies

By the last sentence of the first paragraph of this section the illegal act or official misconduct of the deputy is expressly put in the same category as the illegal act or misconduct of the principal. County of Silver Bow v. Davies, 40 M 418, 427, 107 P 81.

A surety company, which had signed the bond of a clerk of the district court, was responsible for the official misconduct of his deputy to any party injured thereby by virtue of this section. American Bonding Co. v. State Savings Bank, 47 M 332, 339, 133 P 367.

District Court Clerk

Under this section, the liability of the sureties on the bond of a district court clerk for losses sustained by the county through the issuance of spurious jurors' and witnesses' certificates by the clerk's chief deputy depended, not on the fact that in executing and issuing the certificates the deputy was not technically guilty of forgery because he omitted to impress on the certificates the seal of the court as required by statute, but on the question whether their issuance in the form in which they were issued, and under color of office, operated as an effective cause of the county's loss. County of Silver Bow v. Davies, 40 M 418, 427, 107 P 81.

Signatures

The surety of an official bond, joint and several in character, is not released from liability thereon because of the failure of the principal to sign the bond. Deer

Lodge County v. United States Fidelity & Guaranty Co. of Baltimore, 42 M 315, 325, 112 P 1060.

References

Russell v. Chicago, Burlington & Quincy Ry. Co., 37 M 1, 10, 12, 94 P 501; State ex rel. Wallace v. Callow, 78 M 308, 324, 254 P 187.

Collateral References

Officers⇐37.
67 C.J.S. Officers § 39.
43 Am. Jur. 177, Public Officers, § 401 et seq.

Statutory conditions prescribed for public officer's bond as part of bond which does not in terms include them, or which expressly excludes them. 109 ALR 501.

Validity, construction, and application of provision of fidelity bond as to giving of notice of loss or claim within specified time after close of bond year. 149 ALR 945.

6-307. (476) **Qualifications of sureties.** The individual sureties on all official bonds must justify before an officer authorized to administer oaths by an affidavit, to the effect that they are residents and householders or freeholders within the state of Montana, and that each is worth the sum for which he becomes surety in said bond over and above his just debts and liabilities, exclusive of property exempt from execution. No surety company or corporation organized under or that has complied with the laws of this state, and has been duly licensed to do business as such herein, shall be required to justify as a surety, and no such company or corporation shall be accepted as a surety in any case when its liabilities exceed its assets, as ascertained in the manner provided by law.

No member of the board of county commissioners can be accepted as a surety upon the official bond of any county, township, or school district officer in his county; nor must any county officer become a surety upon the official bond of any other county officer.

History: Ap. p. Sec. 1058, Pol. C. 1895; amd. Sec. 3, p. 80, L. 1899; re-en. Sec. 385, Rev. C. 1907; re-en. Sec. 476, R. C. M. 1921. Cal. Pol. C. Sec. 955.

Cross-Reference

Attorney not to be surety in certain cases, sec. 93-2118.

References

State ex rel. Wallace v. Callow, 78 M 308, 324, 254 P 187.

Collateral References

Officers⇐37.
67 C.J.S. Officers § 39.
43 Am. Jur. 179, Public Officers, § 403.

6-308. (477) **When sureties liable for less than full amount.** When the penal sum of any bond required to be given amounts to more than one thousand dollars, the sureties may become severally liable for portions not less than five hundred dollars thereof, making in the aggregate a liability of double the amount named as the penal sum of the bond. And if any such bond becomes forfeited, an action may be brought thereon against any or all of the obligors and judgment entered against them, either jointly or severally, as they may be liable. The judgment must not be entered against a surety severally bound for a greater sum than that for which he is specially liable by the terms of the bond. Each surety is liable to contribute to his cosureties in proportion to the amount for which he is liable.

History: Ap. p. Sec. 1059, Pol. C. 1895; amd. Sec. 1, p. 112, L. 1897; amd. Sec. 4, p. 80, L. 1899; re-en. Sec. 386, Rev. C. 1907; re-en. Sec. 477, R. C. M. 1921. Cal. Pol. C. Sec. 956.

Collateral References

Officers⇐131, 134-143.
67 C.J.S. Officers §§ 155-157.

6-309. (478) **Custody of official bonds.** Every officer with whom official bonds are filed must carefully keep and preserve the same, and give certified copies thereof to any person demanding the same, upon being paid the same fees as are allowable by law for certified copies of papers in other cases.

History: En. Sec. 1060, Pol. C. 1895; re-en. Sec. 387, Rev. C. 1907; re-en. Sec. 478, R. C. M. 1921. Cal. Pol. C. Sec. 957.

6-310. (479) **Form of bonds.** All official bonds must be in form joint and several, and made payable to the state of Montana in such penalty and with such conditions as required by this chapter, or the law creating or regulating the duties of the office.

History: En. Sec. 1061, Pol. C. 1895; re-en. Sec. 388, Rev. C. 1907; re-en. Sec. 479, R. C. M. 1921. Cal. Pol. C. Sec. 958.

References

Deer Lodge County v. United States Fidelity & Guaranty Co. of Baltimore, 42 M 315, 321, 112 P 1060.

Collateral References

Officers⇐37.
67 C.J.S. Officers § 39.
43 Am. Jur. 175, Public Officers, § 398.

6-311. (480) **Extent of sureties' liability—construction of bonds.** Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein for any and all breaches of the conditions thereof committed during the time such officer continues to discharge any of the duties of or hold the office, and whether such breaches are committed or suffered by the principal officer, his deputy, or clerk.

History: En. Sec. 1062, Pol. C. 1895; re-en. Sec. 389, Rev. C. 1907; re-en. Sec. 480, R. C. M. 1921. Cal. Pol. C. Sec. 959.

Appointive State Officer

State officer holding over under his first appointment agreeably to the constitutional provision "until his successor is appointed and qualified," was not required to file a new bond, since the surety on the original bond must be presumed to have executed it with the statutory provision in mind that liability on an official bond shall continue so long as the officer bonded holds the office (this section), and to have assumed a liability equal to the possible duration of the officer's tenure. State ex rel. Nagle v. Stafford, 97 M 275, 289, 34 P 2d 372.

While a bond furnished by an appointive state officer protects the state for the time he holds over under the original appointment, it may not be made the basis of liability for his acts done as his own successor. State ex rel. Nagle v. Stafford, 99 M 88, 93, 43 P 2d 636.

Officer Holding Over

Where a bond is given by an officer such bond would also cover such officer where he holds over until his successor is appointed and qualified. State ex rel. Olsen v. Swanberg, 130 M 202, 299 P 2d 446, 454.

References

Deer Lodge County v. United States Fidelity & Guaranty Co. of Baltimore, 42 M 315, 321, 112 P 1060.

Collateral References

Officers⇐129.
67 C.J.S. Officers § 161.
43 Am. Jur. 185, Public Officers, §§ 415, 416.

Validity of bond as affected by provision for post-mortem payment or performance. 1 ALR 2d 1228.

Extent of liability on fidelity bond renewed from year to year. 7 ALR 2d 946.

6-312. (481) **Extent of sureties' liability—duties subsequently imposed.** Every such bond is in force and obligatory upon the principal and sureties therein for the faithful discharge of all duties which may be

required of such officer by any law enacted subsequently to the execution of such bond, and such condition must be expressed therein.

History: En. Sec. 1063, Pol. C. 1895; re-en. Sec. 390, Rev. C. 1907; re-en. Sec. 481, R. C. M. 1921. Cal. Pol. C. Sec. 960.

Collateral References

Officers⇐129.
67 C.J.S. Officers § 161.
43 Am. Jur. 182, Public Officers, § 409.

Change in duties of employee as affecting liability of sureties on his fidelity bond for his act or default. 43 ALR 977; 46 ALR 976; 62 ALR 411; 77 ALR 861 and 98 ALR 1264.

6-313. (482) **Suit on bonds.** Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein to and for the state of Montana, and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity; and any person so injured or aggrieved may bring suit on such bond, in his own name, without an assignment thereof.

History: En. Sec. 1064, Pol. C. 1895; re-en. Sec. 391, Rev. C. 1907; re-en. Sec. 482, R. C. M. 1921. Cal. Pol. C. Sec. 961.

References

State ex rel. Duggan v. District Court, 65 M 197, 200, 210 P 1062; State ex rel. Farmers Elevator Co. of Reserve v. District Court, 147 M 72, 410 P 2d 160.

Collateral References

Officers⇐135.
67 C.J.S. Officers §§ 168, 169.
43 Am. Jur. 205, Public Officers, §§ 436-456.

Validity, construction, and application of provision of fidelity bond as to giving of notice of loss or claim within specified time after close of bond year. 149 ALR 945.

6-314. (483) **Suit on bonds—successive suits.** No such bond is void on the first recovery of a judgment thereon; but suit may be afterwards brought, from time to time, and judgment recovered thereon by the state of Montana, or by any person to whom a right of action has accrued against such officer and his sureties, until the whole penalty of the bond is exhausted.

History: En. Sec. 1065, Pol. C. 1895; re-en. Sec. 392, Rev. C. 1907; re-en. Sec. 483, R. C. M. 1921. Cal. Pol. C. Sec. 962.

6-315. (484) **Defects not to affect liability.** Whenever an official bond does not contain the substantial matter or conditions required by law, or there are any defects in the approval or filing thereof, it is not void so as to discharge such officer and sureties; but they are equitably bound to the state or party interested; and the state or such party may, by action in any court of competent jurisdiction, suggest the defect in the bond, approval, or filing, and recover the proper and equitable demand or damages from such officer and the persons who intended to become and were included as sureties in such bond.

History: En. Sec. 1066, Pol. C. 1895; re-en. Sec. 393, Rev. C. 1907; re-en. Sec. 484, R. C. M. 1921. Cal. Pol. C. Sec. 963.

Applies Only to Official Bonds

A depositary of public funds is not an officer and a depositary bond is not an official bond within the meaning of this section providing that if there are any defects in the approval or filing thereof etc., the bond shall not be void so as to discharge the officer or his sureties. State ex rel. Urton v. American Bank & Trust Co., 75 M 369, 371, 243 P 1093.

Approval by District Judge

The language of this section was borrowed from the California political code. Adopting the construction placed upon it by the courts of that state, the failure of the district judge to approve the bond of a county treasurer will not be held to invalidate it or to release the surety thereon. Deer Lodge County v. United States Fidelity & Guaranty Co. of Baltimore, 42 M 315, 328, 112 P 1060. See also Stabler v. Adamson, 73 M 490, 237 P 483.

References

State ex rel. Wallace v. Callow, 78 M 308, 322, 254 P 187.

Collateral References

Officers⇨126.
67 C.J.S. Officers §§ 157-159.
43 Am. Jur. 177, Public Officers, § 401.

6-316. (485) **Defective official bonds.** No official bond entered into by any officer, nor any bond, recognizance, or written undertaking taken by any officer in the discharge of the duties of his office, shall be void for want of form or substance or recital or condition, nor the principal or surety be discharged, but the principal and surety shall be bound by such bond, recognizance, or written undertaking to the full extent contemplated by the law requiring the same, and the sureties to the amount specified in the bond or recognizance or written undertaking. In all actions on a defective bond, recognizance, or written undertaking, the plaintiff or relator may suggest the defect in his complaint and recover to the same extent as if such bond, recognizance, or written undertaking were perfect in all respects.

History: En. Sec. 1, Ch. 193, L. 1907; Sec. 394, Rev. C. 1907; re-en. Sec. 485, R. C. M. 1921.

6-317. (486) **Insufficiency of sureties.** Whenever it is shown by the affidavit of a credible witness, or otherwise comes to the knowledge of the court, judge, board, person or body whose duty it is to approve the official bond of any officer, that the sureties on any bond given pursuant to the provisions of this chapter as amended by this act, or any one of them have since such bond was approved died, removed from the state, become insolvent, or from any other cause have become incompetent or insufficient sureties on such bond, the court, judge, board, officer or other person may issue a citation to such officer, requiring him on a day therein named, not less than five nor more than ten days after date, to appear and show cause why such office should not be vacated, which citation must be served and return thereof made as in other cases. If the officer fails to appear and show good cause why such office should not be vacated, on the day named, or fails to give ample additional security, the court, judge, board, officer, or other person must make an order vacating the office, and the same must be filled as approved by law.

History: Ap. p. Sec. 1067, Pol. C. 1895; amd. Sec. 5, p. 81, L. 1899; re-en. Sec. 395, Rev. C. 1907; re-en. Sec. 486, R. C. M. 1921. Cal. Pol. C. Sec. 964.

Collateral References

Officers⇨66, 126.
67 C.J.S. Officers §§ 59, 60, 157-159.
43 Am. Jur. 183, Public Officers, § 410.

Effect of giving new bonds on liability of public officer for defaults of subordinate. 1 ALR 222; 102 ALR 174 and 116 ALR 1064; also 71 ALR 2d 1140.

6-318. (487) **Form of additional bond.** The additional bond must be in such penalty as directed by the court, judge, board, officer, or other per-

son, and in all other respects similar to the original bond, and approved by and filed with the same officer as required in case of the approval and filing of the original bond. Every such additional bond so filed and approved is of like force and obligation upon the principal and sureties therein, from the time of its execution, and subjects the officer and his sureties to the same liabilities, suits, and actions as are prescribed respecting the original bonds of officers.

History: En. Sec. 1068, Pol. C. 1895; re-en. Sec. 396, Rev. C. 1907; re-en. Sec. 487, R. C. M. 1921. Cal. Pol C. Sec. 965.

6-319. (488) **Force of original bond.** In no case is the original bond discharged or affected when an additional bond has been given, but the same remains of like force and obligation as if such additional bond had not been given.

History: En. Sec. 1069, Pol. C. 1895; re-en. Sec. 397, Rev. C. 1907; re-en. Sec. 488, R. C. M. 1921. Cal. Pol C. Sec. 966.

6-320. (489) **Liability of officers and sureties.** The officer and his sureties are liable to any party injured by the breach of any condition of an official bond, after the execution of the additional bond, upon either or both bonds, and such party may bring his action upon either bond, or he may bring separate actions on the bonds respectively, and he may allege the same cause of action and recover judgment therefor in each suit.

History: En. Sec. 1070, Pol. C. 1895; re-en. Sec. 398, Rev. C. 1907; re-en. Sec. 489, R. C. M. 1921. Cal. Pol. C. Sec. 967.

Cross-Reference

County commissioners, liability, sec. 16-1161.

Right of Action

Any party injured by the breach of conditions of an official bond can maintain an action for his damages thereby. American Bonding Co. v. State Savings Bank, 47 M 332, 339, 133 P 367.

Collateral References

Officers⇨135.

67 C.J.S. Officers §§ 168, 169.

Liability on bond of public official or employee as affected by change in principal's duty. 94 ALR 613.

Liability on bond of police or other peace officer for defamation. 13 ALR 2d 902.

What period of limitation governs in an action against a public officer and the surety on his official bond. 18 ALR 2d 1176.

Release of one of joint and several defalcating tort-feasors as releasing insurer which was surety on fidelity bond of each. 35 ALR 2d 1122.

6-321. (490) **Separate judgments on bonds.** If separate judgments are recovered on the bonds by such party for the same cause of action, he is entitled to have execution issued on such judgments respectively; but he must only collect, by execution or otherwise, the amount actually adjudged to him on the same causes of action in one of the suits, together with the costs of both suits.

History: En. Sec. 1071, Pol. C. 1895; re-en. Sec. 399, Rev. C. 1907; re-en. Sec. 490, R. C. M. 1921. Cal. Pol. C. Sec. 968.

Collateral References

Officers⇨143.

67 C.J.S. Officers § 177.

6-322. (491) **Contribution between sureties.** Whenever the sureties on either bond have been compelled to pay any sum of money on account

of the principal obligor therein, they are entitled to recover in any court of competent jurisdiction of the sureties on the remaining bond a distributive part of the sum thus paid, in the proportion which the penalties of such bonds bear one to the other and to the sums thus paid, respectively.

History: En. Sec. 1072, Pol. C. 1895; re-en. Sec. 400, Rev. C. 1907; re-en. Sec. 491, R. C. M. 1921. Cal. Pol. C. Sec. 969.

Collateral References

Principal and Surety⇐194 (1).

72 C.J.S. Principal and Surety §§ 352, 354-361.

43 Am. Jur. 216, Public Officers, § 457.

6-323. (492) **Discharge of sureties.** Whenever any sureties on the official bond of any officer wish to be discharged from their liability, they and such officer may procure the same to be done, if such officer will execute a new bond in accordance with the provisions of this chapter in like form, penalty and conditions, and to be approved and filed as the original bond. Upon the filing and approval of the new bond, such first sureties are exonerated from all further liability; but their bond remains in full force as to all liabilities incurred previous to the approval of such new bond. The liability of the principal and surety or sureties in such new bond is in all respects the same and may be enforced in like manner as the liability of the principal and sureties of the original bond.

History: Ap. p. Sec. 1073, Pol. C. 1895; amd. Sec. 6, p. 81, L. 1899; re-en. Sec. 401, Rev. C. 1907; re-en. Sec. 492, R. C. M. 1921. Cal. Pol. C. Sec. 970.

Withdrawal of Surety

Since, under the provisions of this section, a surety on an official bond may withdraw therefrom at any time, a complaint against a surety company to recover on the bond of a constable, in failing to state that the relationship of principal and surety existed between him and the company at the time of his alleged wrongful seizure and detention of plaintiff's chattels, did not state a cause of action, the allegation that such relationship existed at the time of filing the complaint being insufficient. Ferrat v. Adamson, 53 M 172, 178, 163 P 112.

References

Murphy v. Johns, 56 M 134, 138, 182 P 115.

Collateral References

Officers⇐128.

67 C.J.S. Officers § 165.

43 Am. Jur. 196, Public Officers, §§ 427, 428.

6-324. (493) **Vacancies—bond of appointee—persons appointed to fill vacancies.** Any person appointed to fill a vacancy, before entering upon the duties of the office, must give a bond corresponding in substance and form with the bond required of the officer originally elected or appointed, as hereinbefore provided.

History: En. Sec. 1074, Pol. C. 1895; re-en. Sec. 402, Rev. C. 1907; re-en. Sec. 493, R. C. M. 1921. Cal. Pol. C. Sec. 971.

Collateral References

Officers⇐37.

67 C.J.S. Officers § 39.

6-325. (494) **Release of sureties.** Any surety on the official bond of any county, city, town, or township officer, or on the official bond of any executor, administrator, guardian, or on the bond or undertaking of any person where by law a bond or undertaking is required, may be released from all liability thereon accruing from and after proper proceedings had therefor, as provided in this act.

History: En. Sec. 1075, Pol. C. 1895; re-en. Sec. 403, Rev. C. 1907; re-en. Sec. 494, R. C. M. 1921; amd. Sec. 1, Ch. 134, L. 1941; amd. Sec. 6, Ch. 177, L. 1965. Cal. Pol. C. Sec. 972.

Cross-Reference

Bonds of state officers and employees, sec. 6-105 et seq.

References

State ex rel. Riley v. McCarthy, 78 M 164, 167, 253 P 311; National Surety Co. v. Lincoln County, 238 F 705, 711, 151 C C A 555.

6-326. Proceedings to obtain release from bond—statement—notice. Any surety desiring to be released from liability on the bond of any county or township officer shall file a statement in writing, duly subscribed by himself, or someone in his behalf, setting forth the name and office of the person for whom he is surety, the amount for which he is liable as such, and his desire to be released from further liability on account thereof. A notice containing the object of such statement shall be served personally on the principal, unless he shall have left the state, or his whereabouts cannot after due and diligent search and inquiry be ascertained, in which case the same may be served by publication once a week for four (4) successive publications in some newspaper of general circulation published in the county where the bond is filed on record. The statement, except when the county clerk or county commissioners are principals, shall be filed with the county clerk, and when the county clerk or county commissioners are principals, the statement shall be filed with the district judge. Any surety desiring to be released from liability on the bond of any city or town officer shall file and serve a similar statement with the city or town clerk or mayor. Any surety desiring to be released from an executor's, administrator's or guardian's bond or undertaking shall file and serve a similar statement with the proper officer, person, or authority where the bond is filed on record. All statements provided for in this section must be served personally on the principal as in this section provided, if he can be found for service in the state of Montana; if not he may be served by publication in a newspaper at the county seat as hereinbefore provided, or if no newspaper be published thereat, then in an adjoining county, without any order from any court or other authority: provided further, in all cases for which publication is provided, a printed or written notice posted in at least ten (10) conspicuous places in the county for the time specified for publication of said notice shall be deemed legal notice thereof.

History: En. Sec. 2, Ch. 134, L. 1941; amd. Sec. 7, Ch. 177, L. 1965.

Cross-Reference

Bonds of state officers and employees, sec. 6-105 et seq.

6-327. Failure to file new bond vacates office—when. If any officer or person shall fail to file within twenty (20) days from the date of personal service, or within forty (40) days from the date of the first publication or of posting notice as provided herein, a new or additional bond or undertaking, the office or appointment of the person or officer so failing shall become vacant, and such officer or person shall forfeit his office or appointment, and the same shall be filled as in other cases of vacancy, and in the manner provided by law; and the person applying to be released from

liability on such bond or undertaking shall not be holden or liable thereon after the date herein provided for the vacating and forfeiting of such office or appointment.

History: En. Sec. 3, Ch. 134, L. 1941.

6-328. Liability of sureties where new bond is given. In case a new or additional undertaking be filed, the sureties on the original undertaking not asking to be released, and on the new or additional bond or undertaking, shall be and continue liable for the official acts of such officer or person, jointly and severally, the same as if all were sureties on one and the same instrument. This shall not be deemed to provide retroactive liability on the new surety.

History: En. Sec. 4, Ch. 134, L. 1941.

6-329. Amount of new undertaking — how determined. Whenever a statement is filed, or filed and served as herein provided, the proper authority shall prescribe the penalty or amount in which a new or additional bond or undertaking shall be filed unless already provided by statute; and if no such order be made, then such new or additional bond or undertaking shall be executed for the same amount as the original.

History: En. Sec. 5, Ch. 134, L. 1941.

6-330. (502) **Effect of discharge of sureties.** No surety must be released from damages or liabilities for acts, omissions, or causes existing or which arose before discharge of the surety as hereinbefore provided but such legal proceedings may be had therefor in all respects as though no such discharge had been had.

History: En. Sec. 1083, Pol. C. 1895; re-en. Sec. 411, Rev. C. 1907; re-en. Sec. 502, R. C. M. 1921; amd. Sec. 6, Ch. 134, L. 1941. Cal. Pol. C. Sec. 980.

6-331. (503) **Applicable to what bonds.** The provisions of this chapter apply to the bonds of county, town, or township officers or on the official bond of any executor, administrator, guardian or on the bond or undertaking of any person where by law a bond or undertaking is required except state officers and employees.

History: Ap. p. Sec. 1084, Pol. C. 1895; amd. Sec. 7, p. 82, L. 1899; re-en. Sec. 412, Rev. C. 1907; re-en. Sec. 503, R. C. M. 1921; amd. Sec. 1, Ch. 17, L. 1935; amd. Sec. 7, Ch. 134, L. 1941; amd. Sec. 8, Ch. 177, L. 1965. Cal. Pol. C. Sec. 981.

Cross-Reference

Bonds of state officers and employees, sec. 6-105 et seq.

References

State ex rel. Farmers Elevator Co. of Reserve v. District Court, 147 M 72, 410 P 2d 160.

Collateral References

Executors and Administrators⇦26, 527 et seq.; Guardian and Ward⇦15, 173 et seq.; Receivers⇦51, 212 et seq.

6 C.J.S. Assignments for Benefit of Creditors §§ 174, 405; 33 C.J.S. Executors and Administrators § 67; 34 C.J.S. Executors and Administrators §§ 945, 949 et seq., 1022, 1033, 1037; 39 C.J.S. Guardian and Ward §§ 32 et seq., 197 et seq.

31 Am. Jur. 2d 72, Executors and Administrators, §§ 106, 107; 39 Am. Jur. 2d 46, Guardian and Ward, § 48; 45 Am. Jur. 83, Receivers, § 94 et seq.

Leave of court as a prerequisite to an action on an executor's, administrator's or statutory bond. 2 ALR 563.

Bond of executor or administrator as covering debt due from principal to decedent. 8 ALR 84.

Invalidity of designation of officer, fiduciary or depository as affecting liability on bond. 18 ALR 274.

Liability of clerk of court or his bond for money paid into his hands by virtue of his office. 59 ALR 60.

Right of sureties on bonds to take advantage of noncompliance with statutory requirement as to approval of bond. 77 ALR 1479.

Liability of sureties on bond of guardian, executor, administrator or trustee for defalcation or deficit occurring before bond was given. 82 ALR 585.

Power or discretion of court, after bond of executor, administrator, or testamentary trustee has been given, to dispense, discontinue, or modify bonds. 121 ALR 951.

Right of court or guardian to use funds of incompetent for benefit of others, then incompetent. 160 ALR 1435; also 99 ALR 2d 946.

6-332. (504) **Bonds of receivers, assignees, etc.** All bonds or undertakings given by trustees, receivers, assignees, or officers of a court in an action or proceeding for the faithful discharge of their duties, where it is not otherwise provided, must be in the name of and payable to the state of Montana, and, upon the order of the court where such action or proceeding is pending, may be prosecuted for the benefit of any and all interested therein.

History: En. Sec. 1085, Pol. C. 1895; re-en. Sec. 413, Rev. C. 1907; re-en. Sec. 504, R. C. M. 1921. Cal. Pol. C. Sec. 982.

Collateral References

6 C.J.S. Assignments for Benefit of Creditors §§ 174, 405; 75 C.J.S. Receivers §§ 76, 77, 418-425; 90 C.J.S. Trusts §§ 224, 482.

6 Am. Jur. 2d 392, Assignments for Benefit of Creditors, §§ 105, 106; 45 Am. Jur. 83, Receivers, §§ 94 et seq.

6-333. (505) **Actions on official bonds—notice of pendency.** When an action is commenced in any court in this state, for the benefit to the state, to enforce the penalty of or to recover money upon an official bond or obligation, or any bond or obligation executed in favor of the state of Montana, or of the people of this state, the attorney or other person prosecuting the action may file with the clerk of the court in which the action is commenced an affidavit, stating either positively or on information and belief that such bond or obligation was executed by the defendant, or one or more of the defendants (designating whom), and made payable to the people of the state, or to the state of Montana, and that the defendant or defendants have real estate or some interest in lands (designating the county or counties in which the same is situated), and that the action is prosecuted for the benefit of the state; and thereupon the clerk of the court receiving such affidavit must certify to the county clerk in which such real estate is situated the names of the parties to the action, the name of the court in which the action is pending, and the amount claimed in the complaint, with the date of the commencement of the suit.

History: En. Sec. 1086, Pol. C. 1895; re-en. Sec. 414, Rev. C. 1907; re-en. Sec. 505, R. C. M. 1921. Cal. Pol. C. Sec. 983.

Collateral References

Lis Pendens⇨13 et seq.

54 C.J.S. Lis Pendens § 22 et seq.

43 Am. Jur. 205, Public Officers, § 436 et seq.

6-334. (506) **Actions on official bonds—judgment lien on property of defendants.** Upon receiving such certificate, the county clerk must endorse upon it the time of its reception, and such certificate must be filed in the same manner as notices of the pendency of action affecting real estate; and any judgment recovered in such action is a lien upon all real estate situated in any county in which such certificate is so filed, belonging

to the defendant, or to one or more of such defendants, for the amount the owner thereof is or may be liable upon the judgment, from the filing of this certificate.

History: En. Sec. 1087, Pol. C. 1895; re-en. Sec. 415, Rev. C. 1907; re-en. Sec. 506, R. C. M. 1921. Cal. Pol. C. Sec. 984.

Collateral References

Lis Pendens⇐18, 22 et seq.
54 C.J.S. Lis Pendens §§ 24, 38 et seq.

6-335. (507) **Bonds of deputies, clerks, etc.** Every officer or body appointing a deputy, clerk, or subordinate officer, may require an official bond to be given by the person appointed, and may fix the amount thereof.

History: En. Sec. 1088, Pol. C. 1895; re-en. Sec. 416, Rev. C. 1907; re-en. Sec. 507, R. C. M. 1921. Cal. Pol. C. Sec. 985.

Failure To Require Bond

Under this section, an officer may indemnify himself by requiring a bond of his deputy; failing to do this, neither the officer nor his surety may complain that they have suffered loss. County of Silver Bow v. Davies, 40 M 418, 433, 107 P 81.

Collateral References

Officers⇐37.
67 C.J.S. Officers § 39.
43 Am. Jur. 223, Public Officers, § 468.

6-336. (508) **Repealed—Chapter 68, Laws of 1967.**

Repeal

This section (Sec. 1089, Pol. C. 1895), relating to filing of the county clerk's bond, was repealed by Sec. 10, Ch. 68, Laws 1967. For new provisions relating to bonds for county officers and employees, see sec. 6-203 et seq.

6-337. (509) **Actions to compel specific performance, etc.** In any action to compel the specific performance of an agreement to sell real estate affected by the lien created by the filing of the certificate mentioned in section 6-334, which agreement was made prior to the filing of such certificate, but the purchase price thereof is not due until after the filing of said certificate, the judge of the district court in which said action for specific performance is tried, must, if the purchaser is otherwise entitled to specific performance of such agreement, order the said purchaser to pay the purchase price, or so much thereof as may be due, to the state treasurer, taking his receipt therefor. Upon such payment the purchaser is entitled to enforce the specific performance of the agreement, and take said real estate free from the liens created by the filing of said certificate. The moneys so paid to the state treasurer must be held by him, pending the litigation mentioned in said certificate, and subject to the lien created by the filing of said certificate. If judgment is recovered against the defendant, the state treasurer in his settlement must pay to the county treasurer entitled to the same the amount due the county.

History: En. Sec. 1090, Pol. C. 1895; re-en. Sec. 418, Rev. C. 1907; re-en. Sec. 509, R. C. M. 1921. Cal. Pol. C. Sec. 987.

CHAPTER 4

PUBLIC WORKS CONTRACTOR'S BOND

Section 6-401. Contractors performing public work to furnish bond—conditions.
6-402. Notice to contractor of furnishing provender, material or supplies required.
6-403. Liability of officers for failure to require bond.
6-404. Amount and terms of bond—notice of claimant—form—actions on bonds—special provisions in bonds.

6-401. (5668.41) **Contractors performing public work to furnish bond —conditions.** Whenever any board, council, commission, trustees or body acting for the state, or any county, municipality or any public body, shall contract with any person or corporation to do any work for the state, county, or municipality or other public body, city, town or district, such board, council, commission, trustees or body shall require the corporation, person or persons with whom such contract is made, to make, execute and deliver to such board, council, commission, trustees or body, a good and sufficient bond with two or more sureties, or with a surety company as surety, conditioned that such corporation, person or persons shall faithfully perform all of the provisions of such contract, and pay all laborers, mechanics, subcontractors and materialmen, and all persons who shall supply such corporation, person or persons, or subcontractors with provisions, provender, material, or supplies for the carrying on of such work, a copy of such bond shall be filed with the county clerk and recorder of the county where such work is performed or improvement made, or if to be performed in more than one county, then with the county clerk of either county, except in cases of cities and towns, in which case such bond shall be filed with the city or town clerk thereof; and any corporation, person or persons performing such services, or furnishing such provender, provisions, supplies, or material to any subcontractor shall have the same right under the provisions of such bond as if such work, services, provender, provisions, supplies or material, was furnished to the original contractor; provided, however, that the provisions of this act shall not apply to any money loaned or advanced to any such contractor, subcontractor or other person in the performance of any such work.

History: En. Sec. 1, Ch. 20, L. 1931.

Action on Contract—Change of Venue

An action brought by a merchant against a state highway contractor and his bondsman under this and sections 6-402 and 6-404, to recover for supplies furnished the former's subcontractor, was held to be one upon a contract between the contractor and the state for the benefit of third persons and to be triable in the county in which the person entitled to payment resided or had his place of business. H. Earl Clack Co. v. Staunton, 100 M 26, 29, 44 P 2d 1069.

Estoppel of Surety

This section did not prevent a surety on a bond given hereunder from becoming liable by estoppel to a third party who, in reliance on the surety's representations that he would be protected by the bond, paid off unpaid checks of the contractor and advanced money to the contractor for future payments, all in the nature of claims covered by the bond. Bower v. Tebbs, 132 M 146, 314 P 2d 731.

Federal Court Actions

Sections 6-401 through 6-404 govern the court remedies in favor of suppliers and materialmen suing for and making recovery upon surety bonds furnished and supplied by general contractors engaged in public works and they are the state law to be applied in federal court. United States v. Reliance Ins. Co. of Philadelphia, Pa., 227 F Supp 939, 941.

Provender, Materials or Supplies

Equipment rental comes within the phrase "provender, materials or supplies" as used in a bond given under this section. Bower v. Tebbs, 132 M 146, 314 P 2d 731.

References

Kirkpatrick v. Douglas, 104 M 212, 222, 65 P 2d 1169; H. Earl Clack Co. v. Staunton, 105 M 375, 378, 72 P 2d 1022.

Collateral References

Counties⇐123; Municipal Corporations ⇐346; States⇐101.

20 C.J.S. Counties § 201; 63 C.J.S. Municipal Corporations § 1170 et seq.; 81 C.J.S. States §§ 117-119.

Right of person furnishing material or labor to maintain action on contractor's bond. 77 ALR 21 and 118 ALR 56.

Relative rights, as between surety on public work contractor's bond and unpaid laborers or materialmen, in percentage retained by obligee. 61 ALR 2d 899.

6-402. (5668.42) **Notice to contractor of furnishing provender, material or supplies required.** Every person, firm or corporation furnishing provender, provisions, materials or supplies to be used in the construction, performance, carrying on, prosecution or doing of any work for the state, or any county, city, town, district, municipality or other public body, shall not later than thirty (30) days after the date of the first delivery of such provender, material, supplies or provisions to any subcontractor or agent of any person, firm or corporation having a subcontract for the construction, performance, carrying on, prosecution or doing of such work, deliver or send by certified mail to the contractor a notice in writing stating in substance and effect that such person, firm or corporation has commenced to deliver provender, provisions, materials or supplies for use thereon, with the name of the subcontractor or agent ordering or to whom the same is furnished, and that such contractor and his bond will be held for the same, and no suit or action shall be maintained in any court against the contractor or his bond to recover for such provender, provisions, material or supplies, or any part thereof, unless the provisions of this act have been complied with.

History: En. Sec. 2, Ch. 20, L. 1931; amd. Sec. 1, Ch. 115, L. 1967.

Defense Not Available to Contractor

Where plaintiff in an action against a highway contractor and his surety to recover for supplies furnished to drivers of trucks of a subcontractor, had not received pay therefor, defense that the subcontractor deducted the amount owing from the wages of the drivers, and that therefore he was the agent of plaintiff in collecting for the supplies, did not alter the liability of the contractor and his surety under their contracts. H. Earl Clack Co. v. Staunton, 105 M 375, 384, 72 P 2d 1022.

Subcontractor Agent of Contractor

This section making the giving of notice a condition precedent to the right to proceed to suit does not deprive one of right to maintain an action instituted on the theory that the subcontractor was the agent of the contractor, without having first given notice, and therefore the contractor and his surety were liable for the indebtedness incurred to materialman who furnished supplies to subcontractor—relationship of principal and agent established by contracts. H. Earl Clack Co. v. Staunton, 105 M 375, 380, 72 P 2d 1022.

Collateral References

Counties⇐123; Municipal Corporations ⇐347 (1); States⇐101.

20 C.J.S. Counties § 201.

6-403. (5668.43) **Liability of officers for failure to require bond.** If any board, council, commission, trustee or body acting for the state, or any board of county commissioners or any mayor and common council of any incorporated city or town, or tribunal transacting the business of any such municipal corporation, shall fail to take such bond as herein required, the state or such county, incorporated city or town, or other municipal corporation shall be liable to the persons mentioned in section 6-401 to the full extend and for the full amount of all of such debts so contracted by any such subcontractor as well as such contractor.

History: En. Sec. 3, Ch. 20, L. 1931.

Collateral References

Municipal Corporations⇐345; States⇐101.

63 C.J.S. Municipal Corporations § 1171; 81 C.J.S. States §§ 117-119.

6-404. (5668.44) **Amount and terms of bond—notice of claimant—form—actions on bonds—special provisions in bonds.** The bond men-

tioned in section 6-401 shall be in an amount equal to the full contract price agreed to be paid for such work or improvement, and shall be to the state of Montana, except in cases of cities and towns, in which case such municipality may, by general ordinance, fix and determine the amount of such bond, and to whom such bond shall run; provided, that the same shall not be for a less amount than twenty-five per centum (25%) of the contract price of any such improvement, and may designate that the same shall be payable to such city or town and not to the state of Montana. All such persons mentioned in said section 6-401 shall have a right of action in his or her or their own name or names, on any bond furnished under the terms of this act for work done by such laborers or mechanics and for provender, materials, supplies, provisions or goods supplied and furnished in the prosecution of such work or the making of such improvements; provided, that such persons shall not have any right of action on such bond for any sum whatever, unless within ninety (90) days from and after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer or body action [acting] for the state, county or municipality or other public body, city, town or district, the laborer, mechanic or subcontractor, or materialman or person claiming to have supplied provender, materials, provisions or goods for the prosecution of such work, or the making of such improvement, shall present to and file with such board, council, commission, trustees or body acting for the state, county or municipality or other public body, city, town or district, a notice in writing in substance as follows:

"TO (here insert the name of the state, county, or municipality or other public body, city, town or district):

NOTICE IS HEREBY GIVEN that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or materialman, or person claiming to have furnished labor, materials or provisions for or upon such contract or work) has a claim in the sum of ——— Dollars (here insert the amount) against the bond taken from ——————— (here insert the name of the principal and surety or sureties upon such bond) for the work of ——————— (here insert a brief mention or description of the work concerning which said bond was taken).

(Here to be signed) ————————————"

Such notice shall be signed by the person or corporation making the claim or giving the notice, and said notice, after being presented and filed, shall be a public record open to inspection by any person, and in any suit or action brought against such surety or sureties by any such person or corporation to recover for any of the items hereinbefore specified, the prevailing party shall be entitled to recover in addition to all other costs, attorneys' fees in such sum as the court shall adjudge reasonable; provided, however, that no attorneys' fees shall be allowed in any suit or action brought or instituted before the expiration of thirty (30) days following the date of filing of the notice hereinbefore mentioned; and provided further, that any city or town may impose any other or further conditions and obligations in such bond as may be deemed necessary for its proper protection in the fulfillment of the terms of the contract secured thereby,

and not in conflict herewith; and provided further, that nothing herein referred to with reference to the giving of such notice within ninety (90) days from and after completion of the contract and acceptance of the work shall be construed to prevent or delay the payment of moneys due the contractor under the terms and conditions specified in his contract.

History: En. Sec. 4, Ch. 20, L. 1931; amd. Sec. 1, Ch. 96, L. 1941; amd. Sec. 1, Ch. 175, L. 1957.

"Acceptance"—By Whom

The word "acceptance" in this section as used in connection with a state highway contract, contemplates a final, complete and unconditional acceptance, and there can be no such acceptance while there is still a dispute as to the amount owing on the contract. It means acceptance by officer or body, not engineer. Kirkpatrick v. Douglas, 104 M 212, 219, 65 P 2d 1169.

Attorney Fees

Under this section the prevailing use plaintiff is entitled to recover as compensation for attorneys such sum as the court shall adjudge reasonable for the institution and prosecution of proceedings against surety. United States v. Reliance Ins. Co. of Philadelphia, Pa., 227 F Supp 939, 941.

Fifteen-Day Limitation

Under this section, prior to the 1941 amendment, the limitation of fifteen days merely marked the time beyond which claims might not be filed, and did not prohibit the filing of claims before there was an acceptance of the work. Kirkpatrick v. Douglas, 104 M 212, 218, 65 P 2d 1169.

Collateral References

States⇐101, 108½, 109.
81 C.J.S. States § 117 et seq.

CHAPTER 5

PUBLIC BIDDER'S BOND

Section 6-501. Bids accompanied by covenant of indemnity—contents—bidder's security—money, checks or bonds—forfeiture.

6-501. Bids accompanied by covenant of indemnity—contents—bidder's security—money, checks or bonds—forfeiture. In all cases where (a) the state of Montana, or any department (including the state purchasing department, unless otherwise authorized by express provision of law), institution, board, commission, agency, authority or subordinate jurisdiction thereof, or (b) any county, or other political subdivision of this state, or (c) any municipal corporation or authorized subdivision thereof, or (d) school districts, irrigation districts, or other public authority organized under the laws of the state of Montana (any and all thereof being herein referred to as a "public authority" or "obligee") is authorized by law to solicit bids, tenders or proposals for public works, improvements or undertakings of any kind, or for the purchase of commodities, goods, or property, or for the procurement of technical or special services on a bid basis (exclusive of services on the basis of salaries or wages) or for the sale and purchase of bonds, debentures, notes or any other forms of indebtedness of any such public authority, the respective executive, administrative or other officers of and acting for such public authority shall require, as a condition precedent to considering any such bids, as evidence of good faith on the part of the bidder, and as indemnity for the benefit of such public authority against the failure or refusal of any bidder to enter into any written contract that may be awarded upon and following acceptance of bid, or consummating any sale and purchase of any forms

of indebtedness, that any bid shall contain a written covenant of indemnity conditioned as herein prescribed and that the bid shall be accompanied by bid security of the nature herein specified, for the performance of such covenant. The advertisement, request, or solicitation for bids or offers shall distinctly specify that all bidders, offerors, tenderers or contractors shall,

(a) In any case where bids are solicited other than for purchase of any forms of indebtedness, expressly covenant in any bid that if the bidder shall be awarded the contract the bidder will, within the time required, as stated in the advertisement or solicitation, enter into a formal contract and give a good and sufficient bond to secure the performance of the terms and conditions of the contract; otherwise, the bidder will pay unto the public authority the difference in money between the amount of the bid of the said bidder and the amount for which the public authority legally contracts with another party to perform the work or supply the property, commodities or services, as the case may be, if the latter amount be in excess of the former, but in no event shall the bidder's liability or the liability of the surety of such bidder, exceed the penal sum stated in the solicitation or advertisement for bids, which sum shall be represented by the money posted or stated in the security instrument or bid bond; or

(b) In any case where the bids are solicited for the purchase and sale of any forms of indebtedness of such public authority, expressly covenant that the money or bank instrument accompanying the bid, in the sum specified by the public authority, shall be kept and retained by the public authority as liquidated damages for failure to consummate the purchase of such forms of indebtedness as may be awarded on acceptance of bid, and in compliance with the terms thereof.

In no event shall the bidder's liability, or the liability of the maker of the security instrument, or the liability on the bid bond exceed the amount specified by the public authority in the solicitation or advertisement for bids, whether the amount shall be posted in money, or be stated as the amount payable in the security instrument, or as the maximum amount payable in the bid bond. The public authority shall distinctly specify in the solicitation or advertisement for bids the penal or other sum fixed by statute to be paid by any bidder failing or refusing as aforesaid, in any case where such sum or sums are fixed by statute for bid security; otherwise, it shall in all cases specify the sum which it may deem reasonably necessary to protect and indemnify the public authority against the failure or refusal of the bidder to enter into the contract, or consummate the purchase of indebtedness, as the case may be.

In all cases under category (a) the bidder, offeror, or tenderer shall accompany any bid with either (1) lawful moneys of the United States, or (2) with a cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by a national banking association located in the state of Montana, or by any banking corporation incorporated under the laws of the state of Montana, or (3) a bid bond or bonds executed by a surety corporation authorized to do business in the state of Montana; and in all cases under category (b) the bidder shall accompany

the bid with the security described in (1) or (2) above. The moneys or, in lieu of moneys, any of such bank instruments or bid bonds shall be payable directly to the public authority soliciting or advertising for bids.

If, in any instance, one or more bids be accepted, or if a sale of any form of indebtedness is ordered, or if a contract is awarded, any bidder whose bid is accepted and who shall thereafter refuse to enter into and execute the proposed contract, or carry out and consummate the purchase of any form of indebtedness, as stated in the covenant in the bid, and herein, shall absolutely forfeit such moneys or bank instruments to the public authority concerned, and become immediately liable on the bid bond but not in excess of the penal sum therein stated. The moneys or bank instruments or bid bonds, as the case may be, shall be returned to those bidders whose bids are not accepted. The advertisement, request or other solicitation for bids or offers shall distinctly specify that lawful moneys of the United States, or a cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by banks, as herein specified, payable as aforesaid, or bid bond in any case appropriate therefor, shall constitute compliance with the requirement for bid security. But nothing herein contained shall exclude or be construed to excuse compliance with any other requirements for bonds or other or further security after acceptance of bids or following award of contract, or excuse compliance with any requirements for performance bonds, at any time, as such requirements may be prescribed or authorized by the laws of the state of Montana.

History: En. Sec. 1, Ch. 174, L. 1951.

Collateral References

Indemnity⇨4.
42 C.J.S. Indemnity § 4.

43 Am. Jur. 786, Public Works and Contracts, § 43.

Surety's liability on bid bond for public works. 70 ALR 2d 1370.

CHAPTER 6

OFFICIAL BONDS OF CITY OR TOWN OFFICERS AND EMPLOYEES

Section 6-601. Purchase of surety bonds by city or town council or commissioners—persons covered.
6-602. Bonding of elected or appointed city or town officers and employees—amount of bond—soliciting of offers.
6-603. Determination of adequacy of bond by state examiner.
6-604. Companies permitted to execute bonds.
6-605. Approval of bond by city or town attorney—filing.
6-606. Conditions in official bonds.
6-607. Premiums—charge against budget.
6-608. Application of act to commission and commission-manager forms of government.

6-601. Purchase of surety bonds by city or town council or commissioners—persons covered. The city or town council or commissioners shall purchase all surety bonds for city officers and employees. A bond may cover an individual officer or employee or a blanket bond may cover all officers and employees, or any group or combination of officers and employees.

History: En. Sec. 1, Ch. 67, L. 1967.

Collateral References

Municipal Corporations⇨145.
62 C.J.S. Municipal Corporations § 491.

DECISIONS UNDER FORMER LAW

Conditions of Bond

Former section 11-722 provided for the accountability of all municipal officers, but did not prescribe what the conditions of the bond should be. City of Philipsburg v. Degenhart, 30 M 299, 303, 76 P 694.

Money collected from gambling houses and brothels by city officers, and receipted for by the treasurer, was held to have been received for the city, though such money was illegally collected, and the failure of the treasurer to pay it over to his successor in office was a breach of his official bond, for which his sureties were liable. City of Philipsburg v. Degenhart, 30 M 299, 303, 76 P 694.

6-602. Bonding of elected or appointed city or town officers and employees—amount of bond—soliciting of offers. All elected or appointed city or town officers and employees shall be bonded in such sums as the ordinance may require. The amount for which a city or town officer or employee shall be bonded shall be based on the amount of money or property handled and the opportunity for defalcation. The city or town council or commission shall actively solicit offers on a competitive basis from available qualified insurance or surety companies before purchasing the bonds.

History: En. Sec. 2, Ch. 67, L. 1967.

6-603. Determination of adequacy of bond by state examiner. The amount for which any city or town officer or employee or group of officers or employees shall be bonded shall be subject to the supervision of the state examiner. If the state examiner determines that the amount of the bond is inadequate he may require the city or town council or commission to purchase an adequate bond.

History: En. Sec. 3, Ch. 67, L. 1967.

6-604. Companies permitted to execute bonds. Bonds purchased by the city or town council or commission shall be executed by responsible insurance or surety companies authorized and admitted to execute surety bonds in this state.

History: En. Sec. 4, Ch. 67, L. 1967.

6-605. Approval of bond by city or town attorney—filing. The form of bonds for city or town officers and employees must be approved by the city or town attorney and filed and recorded in the office of the city or town clerk.

History: En. Sec. 5, Ch. 67, L. 1967.

6-606. Conditions in official bonds. All official bonds covering a group of city or town officers or employees shall be made upon the same conditions as are required of a principal under section 6-306, R. C. M. 1947, except that the bond need not be signed by each officer and employee.

History: En. Sec. 6, Ch. 67, L. 1967.

6-607. Premiums—charge against budget. The premiums for all surety company bonds shall be a proper charge against the budget or budgets of the city or town general fund, or against the budget or budgets of those city or town funds, where the officer or employee renders service.

History: En. Sec. 7, Ch. 67, L. 1967.

6-608. Application of act to commission and commission-manager forms of government. This act applies to the bonding of all elected or appointed officers and employees under the commission form of city government and to the commission-manager form of city government.

History: En. Sec. 8, Ch. 67, L. 1967.

TITLE 7

BUILDING AND LOAN ASSOCIATIONS

Chapter 1. Laws regulating the operation of building and loan associations, 7-101 to 7-159.

CHAPTER 1

LAWS REGULATING THE OPERATION OF BUILDING AND LOAN ASSOCIATIONS

Section 7-101. Purpose—definition.
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7-147. Reports and examinations by superintendent of banks confidential.
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7-151. Reorganization of associations under liquidation—procedure.
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7-154. Exempt from operation of state laws, when.
7-155. Act applies only to loans, credits, etc., insured under National Housing Act.
7-156. Conversion of building and loan and other home financing institutions into federal savings and loan associations.
7-157. Effect of conversion of association—powers and privileges.
7-158. Associations empowered to make loans guaranteed under Servicemen's Readjustment Act of 1944.
7-159. Act controlling.

7-101. (6355.1) **Purpose—definition.** A corporation mutually operated for the purpose of encouraging home ownership and thrift among its members and making substantially all of its loans to them on real estate mortgage security, shall be known in this act as a building and loan association or a savings and loan association, and shall be under the supervision of the state examiner and ex officio superintendent of banks, whose duty it shall be to enforce all laws with respect thereto. The members of a building and loan association shall be its shareholders, stockholders, borrowers or purchasers of real estate under contract. Such associations shall have continual succession and shall be organized under the provisions of this act. Wherever in this act the name building and loan association is used the same shall apply to and comprehend savings and loan associations organized under this act.

History: En. Sec. 1, Ch. 57, L. 1927; amd. Sec. 1, Ch. 187, L. 1945; amd. Sec. 1, Ch. 68, L. 1949.

References

Merchants' Nat. Bank of Glendive v. Dawson County, 93 M 310, 321, 19 P 2d 892; Security Bldg. & Loan Assn. v. Shallow, 96 M 498, 501, 31 P 2d 732.

Collateral References

Building and Loan Associations⊂=1.

12 C.J.S. Building and Loan Associations § 1.

Generally, 13 Am. Jur. 2d 143, Building and Loan Associations, § 1.

Authority of officer of building and loan association to indorse and transfer commercial paper. 37 ALR 2d 510.

7-102. (6355.2) **Articles of incorporation — contents.** Whenever any number of persons, not less than five (5), shall desire to incorporate a building and loan association, having for its object the conduct and operation of such an association as defined in this act, they shall prepare and file articles of incorporation to that effect in the manner in this act specified; such articles shall be signed, sealed and acknowledged in the form now provided by the statutes of this state for the conveyance of real estate, and shall include the following:

1. The name of the association. The name shall not be the same as, nor too closely resemble, that in use by any existing corporation established under the laws of this state. The words "building and loan association" or "savings and loan association" shall form a part of the name, and no corporation not organized under this act shall be entitled to use a name

embodying said combination of words; provided, that the associations now existing may continue their present names;

2. The principal office, or place of business of the association shall be within this state;

3. The amount of its capital stock and the number of shares into which the same shall be divided; such capital stock shall be divided into shares having a par value of one hundred dollars ($100.00);

4. A provision that such association is organized under this act for the purposes herein expressed;

5. The names and residences of the persons who subscribed and acknowledged the said declaration, a majority of whom shall be citizens of this state, and shall thereafter be called incorporators.

History: En. Sec. 2, Ch. 57, L. 1927; amd. Sec. 1, Ch. 67, L. 1949.

13 Am. Jur. 2d 149, Building and Loan Associations, § 6 et seq.

Collateral References

Building and Loan Associations⊂⊃5 (1), (2).

12 C.J.S. Building and Loan Associations § 7.

Authority of officer of building and loan association to indorse and transfer commercial paper. 37 ALR 2d 510.

7-103. (6355.3) **Certified copy of articles prima facie evidence.** A certified copy of any articles of incorporation filed in pursuance of this act, must be received in all courts and other places as prima facie evidence of the facts therein stated.

History: En. Sec. 3, Ch. 57, L. 1927.

Collateral References

Evidence⊂⊃343 (5).

32 C.J.S. Evidence § 660.

7-104. (6355.4) **Evidence of corporate existence or capacity.** The certificate issued by the secretary of state in pursuance of section 7-106, or a certificate issued by the superintendent of banks setting forth that any association, domestic or foreign, has fully complied with the provisions of this act and is lawfully authorized to transact business in this state shall be admitted in evidence in all courts in this state, and shall be prima facie evidence of the corporate character and capacity of such association and of its right to transact business in this state, excepting in an action prosecuted by the state in the nature of quo warranto.

History: En. Sec. 4, Ch. 57, L. 1927.

32 C.J.S. Evidence §§ 638, 640, 644, 645, 648; 32A C.J.S. Evidence §§ 766, 773.

Collateral References

Evidence⊂⊃334 (1), 383 (4).

7-105. (6355.5) **Bylaws.** Contemporaneously with or immediately following the execution of said articles of incorporation provided for in section 7-102, the incorporators then acting in the capacity of directors shall adopt appropriate bylaws to govern and prescribe the methods and the officers by whom the business of the association shall be conducted. The bylaws shall be in conformity with the provisions of this act, and at all times during the regular hours of business shall be open to the inspection of the members at its principal place of business. The bylaws, among other things, shall especially provide for the character and method of conducting the business of the association, with rules governing the addition of

members, the sale of its shares, the amount of membership fee; provide for the annual meeting of the shareholders; for the annual election and qualification of directors and for the term or period during which the directors shall serve; provided that the said term or period for all directors shall not be less than one nor more than three years, and that the directors shall be so elected that as near as possible the term of an equal number shall expire each year; for the appointment of officers; for the adoption, ratification and amendment of the bylaws and which adoption, ratification and amendment may be made either by the stockholders or board of directors; for the method of voting at such annual meeting and for the periodical investigation of the business and condition of such association. Provided, however, that no bylaws and no change or amendment thereof shall be effective until first approved by the superintendent of banks, and provided further, that no association shall commence the transaction of business as such until the bylaws are first approved by the superintendent of banks.

History: **En. Sec. 5, Ch. 57, L. 1927.**

12 C.J.S. Building and Loan Associations § 7.

Collateral References

Building and Loan Associations⊂⇒5.

7-106. (6355.6) **Capital stock requirements—investigation—certificate of incorporation, how issued.** The capital stock named in the articles of incorporation shall be deemed to refer to the authorized capital stock and the organization may be completed and business commenced when five per cent thereof is subscribed and not less than twenty-five hundred dollars ($2500.00), paid in, in cash and such amount must thereafter be maintained; and provided further that whenever such articles of incorporation are in due form and regularly executed and the bylaws have been duly approved as above required and it shall be made to appear to the satisfaction of the superintendent of banks that five per cent of the authorized capital has actually been paid in cash upon the subscription of shares, the superintendent of banks shall thereupon ascertain from the best sources of information at his command the responsibility, character and general fitness of the incorporators, and that there is a reasonable need for the existence of such an association, and that the public convenience and advantage will be promoted thereby. If the superintendent of banks shall not be satisfied with the result of his investigations of the matters above specified, he shall, within sixty days (60) after said articles of incorporation and bylaws have been presented to him, refuse to issue the certificate hereinafter described. If he shall be satisfied with the result of his said investigations, he shall within sixty days (60) after said articles of incorporation and bylaws have been presented to him, issue under his hand, and official seal, a certificate reciting in substance the filing in his office of the articles of incorporation and bylaws; that said articles and bylaws conform to all the requirements of this act; that he has approved the same and that he verily believes that the incorporators are fit and proper persons to conduct the business of a building and loan association as defined in this act and said bylaws and that there is a reasonable need for the existence of said building and loan association, and that the public con-

venience and advantage will be promoted thereby. Said certificate shall be made in quadruplicate and attached to each copy of the articles of incorporation, one of which shall be retained by the superintendent of banks, the other three shall be returned to the incorporators who shall forthwith file one copy thereof in the office of the secretary of state, one in the office of the clerk and recorder of the county in which the principal place of business of said association is located and the other shall be retained by the association. Immediately upon the receipt of said certified copy, the secretary of state shall issue a certificate of incorporation, whereupon the incorporation of said association shall be deemed complete.

History: En. Sec. 6, Ch. 57, L. 1927.

Collateral References

Building and Loan Associations⇐8 (1), (2), 9.

12 C.J.S. Building and Loan Associations § 22.

13 Am. Jur. 2d 163, Building and Loan Associations, § 22 et seq.

Basis of settlement between borrowing member and building and loan association which becomes insolvent before stock matures. 50 ALR 533 and 113 ALR 240.

Right of borrowing member of building and loan association to tender matured stock purchased from nonborrowing members. 85 ALR 968.

Fraud inducing deposits or subscriptions to stock in building and loan association as ground of rescission or preference where association is insolvent. 100 ALR 573.

Purchase or retirement of stock by building and loan association at a price less than its withdrawal value. 134 ALR 1212.

7-107. (6355.7) **Directors—duties.** The conduct and management of the affairs and business of such association shall be vested in a board of directors which shall consist of not less than five (5), nor more than nine (9), members. The incorporators of the association shall serve as directors until the first meeting of the stockholders to be held at the time provided for by this act, or until their successors are elected and qualified, after which, the directors shall be elected by the stockholders of the association in accordance with the provisions of this act and the bylaws of the association. The directors, unless it is otherwise provided by the bylaws of the association, shall elect or appoint all the officers of the association. Such directors when appointed or elected shall file with the superintendent of banks their oath of office, as provided in election or appointment of bank directors. Meetings of the board of directors must be held at least once each month.

History: En. Sec. 7, Ch. 57, L. 1927.

Collateral References

Building and Loan Associations⇐23.

12 C.J.S. Building and Loan Associations § 9 et seq.

7-108. (6355.8) **Superintendent of banks to approve contracts paying income to person other than association—penalty for not securing.** No fiscal agency or promotion contract or any other contract or arrangement whereby the membership fee, or any other income properly payable to the association, or any part thereof, shall be payable to an agent or other contracting party or otherwise than to the association, or whereby any part of the business of such association or the management or conduct of its affairs or the expense thereof is contracted to another, shall be entered into or allowed until the same has been submitted to the superintendent of banks and by him approved in writing; nor shall any such contract be extended

without such approval. Any such contract, or the extension of any such contract, not so first approved shall be null and void. Any person operating under such a contract or extension, not so first approved or taking or receiving any such income properly payable to the association without such approval, shall be guilty of a misdemeanor.

History: En. Sec. 1, Ch. 154, L. 1931. 12 C.J.S. Building and Loan Associations § 58.

Collateral References

Building and Loan Associations⊂⊃40.

7-109. (6355.9) **Removal of directors from office.** No director shall be removed from office except as herein provided, or by a vote of the stockholders holding two-thirds of the capital stock, at a general meeting held after previous notice given in the manner provided in section 7-111. Meetings of the stockholders for this purpose may be called by the president, or by a majority of the directors, or by stockholders holding not less than twenty-five per cent of the capital stock.

History: En. Sec. 8, Ch. 57, L. 1927. 12 C.J.S. Building and Loan Associations § 10.

Collateral References

Building and Loan Associations⊂⊃23 (2).

7-110. (6355.10) **Meetings of stockholders and directors.** (a) The meetings of the stockholders of a Montana building and loan association must be held at its office or principal place of business in this state.

(b) In its bylaws such association shall provide for at least one regular meeting of stockholders annually, Notice of any meeting, whether regular or special, shall be given by the secretary in accordance with section 7-111. The board of directors shall have the right to call a special meeting at any time. The board of directors must also call a special meeting whenever petitioned so to do by stockholders owning at least twenty-five per cent of the issued stock. The secretary shall call special meetings in the same manner as provided in section 7-111.

History: En. Sec. 9, Ch. 57, L. 1927. 12 C.J.S. Building and Loan Associations §§ 16, 18.

Collateral References

Building and Loan Associations⊂⊃6 (2).

7-111. (6355.11) **Notice of meetings.** At least thirty (30) days prior to any annual or special meeting of any such association a notice stating the time and place of such meeting shall be deposited in the post office at the principal place of business of such association directed to each member at his address, as the same appears at the time on the books of the association, and when so deposited, postage prepaid, shall be deemed a legal and sufficient notice of any such meeting: provided also that in addition thereto notice may be given by four (4), consecutive weekly publications in a newspaper published in the county where the association has its principal place of business. Such publication shall be complete on the day of the fourth publication and in notices of special meetings there shall be attached to and accompanying such notice a statement of any matter or

matters to be considered at said meeting. All members of such association shall be entitled to vote at such meetings in person or by proxy.

History: En. Sec. 10, Ch. 57, L. 1927.

7-112. (6355.12) **Proxies.** At least once every year the board of directors of every building and loan association shall, by resolution, direct the secretary of such association and he shall mail to every stockholder of such association a blank form of proxy, and the stockholder shall have the right and privilege of withdrawing his former proxy and of substituting another in its stead. Every proxy shall continue in force and be binding upon the stockholder until such proxy is revoked or an another substituted.

History: En. Sec. 11, Ch. 57, L. 1927. 12 C.J.S. Building and Loan Associations § 18.

Collateral References

Building and Loan Associations⇐6 (2).

7-113. (6355.13) **Powers and duties of building and loan associations.** Every building and loan association is a creature of the law having certain powers and duties of a natural person and as such has power:

(1) Of continual succession, by its corporate name;

(2) To sue and be sued, in any court;

(3) To make and use a common seal and alter same at pleasure;

(4) To appoint such officers or agents as the business of the corporation may require, and to allow them suitable compensation;

(5) To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.

(6) Such associations shall have power to issue stock to members on such terms and conditions as the constitution and bylaws may provide, but no association shall issue preferred stock.

(7) To assess and collect from members dues on stock and interest on loans at the times and in the amount as provided for in the constitution and bylaws. The combined total of the amounts paid to an association for interest, commission, bonus, discount and other similar charges, less a proper deduction for all dividends, refunds, and cash credits of all kinds, shall not create an actual net cost to the borrower in excess of the maximum lawful contract rate of interest in this state. Interest not exceeding the maximum lawful contract rate may also be charged on unpaid interest payments from the time such interest payments are due. Interest, not exceeding the lawful contract rate, may also be charged and collected on delinquent stock payments when such unpaid payments are credited with dividends. Said interest shall in no event be at a rate exceeding the rate per centum of the dividend declared on the same unpaid stock payments. No association shall charge or collect from any stockholder, member or borrower, any fines, premiums, or penalties of any kind whatsoever. Any officer, agent or employee of any association collecting or attempting to collect any penalty, fine or premium of any kind whatsoever or any interest at a rate higher than provided in the note or other evidence of debt and in this act, shall be guilty of a misdemeanor.

(8) To permit members to withdraw all or part of their stock credits at such times and upon such terms, as the constitution and bylaws may provide; provided that no charge or fee, except as herein provided, shall be made against any member who withdraws his stock, after having given thirty (30) days' notice of such withdrawal; provided, also, that no fine of any description shall be made upon the par value of such stock or upon the declared dividends because of such withdrawal. Any member who withdraws his stock or whose stock is matured, shall be entitled to receive all dues paid in and all dividends declared less interest, if any, as provided in subsection (7), less a reasonable membership fee not exceeding two (2) per centum of the par value of each share of stock and less a prorata share of all losses, if any, which have occurred, and no other fine or assessments shall be made against such stock. Applications for withdrawal are to be registered on the books of the association in the order received and one-half of all cash collections, not required to meet outstanding contracts, must be used for the payment of the matured stock and of the withdrawals in the order registered; provided, however, that the other half of such collections each month may be used for the payment of withdrawals other than in the order registered, but no member shall receive more than one hundred dollars ($100.00) in any one month other than by payment of an application for withdrawal in the order registered. The term "outstanding contracts" includes the costs and expenses of operation, completion of loans, payment of taxes and assessments and necessary remodeling and repairs on properties owned by or mortgaged to the association, repayment of all borrowed money and all fixed charges.

(9) To cancel shares of stock upon which all credits have been withdrawn, or upon which loans have been canceled or stock upon which no payments have been made for a period of six (6) months, by returning to the stockholders all credits, if any, and reissue such shares as new stock.

(10) To issue stock to minors and permit the same to be withdrawn as other stock, and the receipt of such minor shall be a valid acquittance if his rights have been fully secured to him.

(11) To acquire, hold, encumber and convey such real estate and personal property as may be necessary for the transaction of its business, or necessary to enforce or protect its securities. Provided, not over ten (10) per cent of the assets of any association shall be invested in home office buildings, furniture and fixtures. Also ownership of other real property acquired in any manner or for any purpose shall not be held for more than five (5) years, except by permission of the superintendent of banks.

(12) To borrow money, only when necessary not exceeding twenty (20) per centum of its assets except when borrowing from the federal home loan bank as hereinafter provided, and issue its promissory note therefor; provided, that the assets and securities of an association shall not be pledged or hypothecated to secure its borrowed money or for any other purpose, without the consent of the superintendent of banks. However, if the superintendent of banks determines that it is advisable to pledge assets in order that funds may be secured he may authorize such pledging or hypothecation; but in no event shall the margin of security pledged exceed twenty-five (25) per centum of the funds so borrowed except when

funds are borrowed from the federal home loan bank; an association may borrow money from the federal home loan bank upon such terms as may now or hereafter be required by the federal home loan bank, and to execute the promissory note of the corporation therefor, and to pledge or hypothecate any of the assets of the corporation to secure the repayment of said loan, with interest, in accordance with the Federal Home Loan Bank Act, and the rules and regulations adopted or to be adopted thereunder.

(13) To make loans to members on the security of the shares of the association, and also on their notes secured by first mortgages on improved real estate, including suburban homes, but not on farm lands or mining property, for not to exceed seventy-five (75) per centum of the actual value of such real estate, and upon such terms and conditions as may be provided in the constitution and bylaws; provided, however, that in all cases where the promissory note, or other written evidence of the loan made by any building and loan association required the payment of said loan, or total aggregate sum of principal and interest in periodic installments, said promissory note, or other written evidence of debt shall specifically state the actual interest rate charged the borrower upon the unpaid balance of the principal amount at each periodic payment; provided, further, that when the note or other evidence of debt does not require the payment of said loan in periodic installments, the note or other evidence of debt shall specifically state the actual rate of interest to be charged the borrower.

Provided, however, that in all notes and mortgages now in force which do not specify the actual rate of interest charged the borrower upon the unpaid balance of the principal at each periodic payment, all payments made on the said notes must be distributed by crediting the same, first, upon the interest on the unpaid balance of the loan at the rate actually earned under the terms of the notes and mortgages, and the remainder upon the principal of the loan, and no charges or deductions from any of said periodic payments shall be permitted by any such association not specifically provided for in said promissory note or other evidence of such loan.

(14) To cancel such loans and release the securities on such terms as the board of directors may provide. But any borrower may have his loan canceled upon the following terms, to wit:

By paying all the interest up to date of cancellation and the sum actually borrowed, less payments on principal, dues paid in and the dividends credited.

(15) To invest the money of the association in:

(a) The bonds and securities of the United States, bonds and other obligations guaranteed as to interest and principal by the United States, and the stocks, bonds, debentures and other securities and obligations of any federal home loan bank created under the laws of the United States;

(b) The bonds and warrants of any state and of any county, city or school district of the state of Montana;

(c) The obligations of the federal savings and loan insurance corporation lawfully issued pursuant to Title IV of the National Housing Act;

(d) Improved real estate which has been sold under contract, including suburban homes, but not including farm lands or mining property; provided, however, that the total amount remaining so invested, excluding real estate otherwise acquired, shall at no time exceed fifteen (15) per cent of its assets; and provided further, that in no specific case shall the amount so invested exceed eighty-five (85) per cent of the price stipulated in the contract of sale or eighty-five (85) per cent of the value of the property so purchased, whichever is the lesser;

(e) Not to exceed ten (10) per cent of the association assets in other bonds and securities.

(16) To loan money to other building and loan associations;

(17) To make such semiannual distribution of all the earnings after payment of expenses and setting aside a sum for the contingent funds as herein provided;

(18) To amend its articles of incorporation by changing the name, place of business, the number of directors; to increase or decrease the capital stock and provide for its own continual succession by a majority vote of its directors; provided that no such amendments shall be effected until first approved by the superintendent of banks;

(19) To dissolve the corporation in accordance with the provisions of this chapter;

(20) To provide by constitution and bylaws, adopted or amended, by its board of directors for the proper exercise of the powers herein granted and the conduct and management of its affairs;

(21) All such other powers as are necessary and proper to enable such corporation to carry out the purpose of its organization.

(22) Any two (2) or more building and loan associations, by and with the consent and approval of the superintendent of banks, may consolidate and unite and become incorporated in one (1) body, with or without any dissolution or division of the funds or property of any such association, or any such association may transfer its engagements, funds and property to any like association upon such terms as may be agreed upon by a majority vote of the respective board of directors, and ratified by a two-thirds (2/3) vote of the shares present and voting in person or by proxy at a special meeting or meetings of the stockholders of the respective associations convened for that purpose, upon notice given as provided by law, said notice to state the object of the meeting. No such transfer shall prejudice any right of any creditor of such association.

History: En. Sec. 12, Ch. 57, L. 1927; amd. Sec. 1, Ch. 163, L. 1929; amd. Sec. 1, Ch. 11, L. 1933; amd. Sec. 1, Ch. 80, L. 1939; Sec. 1, Ch. 164, L. 1943.

Compiler's Notes

Subdivision 22 of this section was added by Sec. 1, Ch. 168, Laws 1931 and repealed by Sec. 4, Ch. 11, Laws 1933. Section 1 of Ch. 11, Laws 1933 amended this section, re-enacting subd. 22.

The Federal Home Loan Bank Act, referred to in subd. (12), is compiled in the United States Code as Tit. 12, § 1421 et seq.

Title IV of the National Housing Act, referred to in subd. (15) (c), is compiled in the United States Code as Title 12, § 1724 et seq.

Cross-Reference

Investments in certain federally guaranteed bonds authorized, secs. 35-142, 35-143.

Collateral References

Building and Loan Associations⇐1-40.

12 C.J.S. Building and Loan Associations §§ 3 et seq., 49 et seq.

13 Am. Jur. 2d 183, Building and Loan Associations, §§ 42-45.

Power of building and loan association to borrow money to pay withdrawing members holding either matured or partially matured stock. 87 ALR 1156.

Right of building and loan association to set off, against withdrawal value or right of stock, an independent indebtedness of member. 88 ALR 621.

Building and loan association as within statute relating to lenders of money. 99 ALR 1027.

Right of building and loan association to transfer to third person loan made to borrowing member. 112 ALR 459.

Building and loan associations, which are members of federal reserve banks or similar federal agencies or national banks, as within state social security or unemployment compensation act. 145 ALR 1074 and 165 ALR 1250.

7-113.1. Loans and investments. Building and loan associations and savings and loan associations organized, and operating under the laws of the state of Montana, and insured by the federal savings and loan insurance corporation, may, in addition to any loan or investment now permitted, make any real estate loan upon terms and conditions set by the state superintendent of banks but not to exceed the authority to make real estate loans granted to savings and loan associations chartered by the United States, and domiciled in Montana, the provisions of any laws of this state to the contrary notwithstanding. The additional real estate loans hereby authorized may be made on the same terms and conditions and subject to the same limitations as shall from time to time be permitted by acts of Congress of the United States or of the federal home loan bank board to federally chartered savings and loan associations domiciled in this state.

History: En. Sec. 1, Ch. 263, L. 1963.

7-114. Repealing clause—exception. All acts and parts of acts in conflict herewith are hereby repealed; provided, however, that this act shall not be so considered or construed as to in any way modify or repeal the provisions of sections 7-153, 7-154 and 7-155, relating to transactions under the provisions of the National Housing Act as amended.

History: En. Sec. 2, Ch. 80, L. 1939.

7-115. (6355.14) **Stockholders.** The owners of shares in a building and loan association are called stockholders.

History: En. Sec. 13, Ch. 57, L. 1927.

Collateral References

Building and Loan Associations⇐6-8.

12 C.J.S. Building and Loan Associations §§ 16-21, 28.

13 Am. Jur. 2d 157, Building and Loan Associations, §§ 16-21.

7-116. (6355.15) **Transfer of stock—effect.** The delivery of a stock certificate of a building and loan association to a bona fide purchaser or pledgee for value, together with a written transfer of the same, or a written power of attorney to sell, assign or transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title as against the creditors of the transferor and subsequent purchasers, but no such transfer shall affect the right of the building and loan association to pay any dividend due upon the stock, or treat the holder of record as the holder in fact, until such transfer is recorded upon the books of the building and loan association, or a new certificate is issued to the person to whom it has been transferred.

History: En. Sec. 14, Ch. 57, L. 1927.

Collateral References

Building and Loan Associations⇐10.

12 C.J.S. Building and Loan Associations § 24.

13 Am. Jur. 2d 166, Building and Loan Associations, § 25.

7-117. (6355.16) **Requirements of transfer in certain cases.** When a certificate of stock in a building and loan association is owned by persons residing out of the state, or is lost, the president, secretary or directors of such association, before entering any transfer of such stock on its books, or before issuing a new certificate therefor to the transferee or owner, may require from the attorney or agent of the owner or from the person claiming under the transfer, an affidavit or other evidence that the owner was alive at the date of the transfer or that the original certificate is lost and has not been assigned or transferred, and may also require from the attorney, agent or claimant a bond of indemnity with a surety or sureties satisfactory to the officers of such association, to protect such association against any liability to the owner, assignee or transferee of such shares or the legal representatives of the owners of such shares, in case of his or her death before the transfer, and also to protect such association against any liability accruing or resulting by reason of said lost or original certificate being thereafter presented to it. If such affidavit or other evidence or bond be not furnished when required, as herein provided, neither such association nor any officer thereof shall be liable for refusing to enter the transfer on the books of the association.

History: En. Sec. 15, Ch. 57, L. 1927.

Collateral References

Building and Loan Associations⇐10.

12 C.J.S. Building and Loan Associations § 24.

Rights, duties and liability in connection with transfer of stock of decedent. 7 ALR 2d 1240.

7-118. (6355.17) **Bonds of officers, agents and employees.** It shall be the duty of the board of directors of every building and loan association to require that all officers, agents and employees of building and loan associations whose duty includes the handling of moneys, notes, bonds, credits and cash items, and whose duties include bookkeeping or the making of entries in relation to the business of the building and loan association and its customers, be bonded. The board of directors shall by order duly entered upon the minute books of the board designate all the officers, agents and employees to be so bonded and the amount of bonds to be given by each. Such action as to the personnel and amount and the surety company or sureties to be subject to approval by the state superintendent of banks, the bonds to be in such form as shall be provided and approved by the state superintendent of banks, the bonds to be approved by the president of the building and loan association and his action reported to the board of directors; all bonds required by this section to be kept in the custody of the building and loan association subject to inspection by examiners from the office of the superintendent of banks; provided, as far as possible, they shall not be placed in the custody of the officer, agent or employee for whom the same is given.

History: En. Sec. 16, Ch. 57, L. 1927; amd. Sec. 1, Ch. 5, L. 1933.

Collateral References
Building and Loan Associations⇨23.
12 C.J.S. Building and Loan Associations § 9 et seq.

7-119. (6355.18) **Employment of agents — licenses and revocation thereof.** It shall be unlawful for any building and loan association doing business within the state of Montana to employ any agent for the purpose of soliciting loans and/or the sale of stock in the said association, unless he shall first be licensed by the superintendent of banks to solicit loans and/or sell the stock of said association and no agent representing any association, foreign or domestic, doing business within the state of Montana shall solicit loans and/or the sale of stock of any association unless he shall first be licensed by the superintendent of banks.

No license shall be issued to any applicant for an agent's license until such applicant shall have first filed in the office of the superintendent of banks a written request from the building and loan association desiring to employ him as agent and has made and filed an application therefor upon a form to be prescribed and furnished by the examiner, which must show the applicant's name, business and residence address, community or district in which he wishes to act as agent, the name of the company to be represented, his occupation for the last twelve months and such other information as the superintendent of banks may require. If the superintendent of banks is satisfied that the applicant is a fit and proper person to engage in the solicitation of loans and/or the sale of stock he shall issue the license. The superintendent of banks upon ten (10) days' notice to any agent, and upon hearing thereon, may revoke the license of any agent upon the following grounds:

(1) For misrepresentation;

(2) If the said agent be convicted in any court for violation of the criminal statutes;

(3) When satisfied that said agent is not a fit and proper person to engage in the business of selling building and loan association stock;

(4) He shall revoke the license of any agent upon the request of such association employing such agent.

Each license provided for in this act shall expire on December 31st of each year, and for the issuance or renewal thereof the superintendent of banks shall require a fee of two dollars ($2.00).

History: En. Sec. 17, Ch. 57, L. 1927.

7-120. (6355.19) **Fund for contingent losses.** The amount to be set aside to the fund for contingent losses shall be determined by the board of directors, but in all permanent or serial associations at least five per cent (5%) of the net earnings shall be set aside each year for such fund until it reaches at least five per cent (5%) of the book value of the stock. All losses shall be paid out of such fund until the same is exhausted, and whenever the amount in said fund falls below five per cent (5%) of the book value of the stock as aforesaid, it shall be replenished by annual appropriations of at least five per cent (5%) of the earnings, as hereinbefore provided, until it again reaches said amount.

History: En. Sec. 18, Ch. 57, L. 1927.

12 C.J.S. Building and Loan Associations §§ 1-6, 49-55, 57.

Collateral References

Building and Loan Associations⇐1-3, 24.

7-121. (6355.20) **Payment of expenses — losses — dividends —reserve fund.** All expenses of any such association shall be paid out of the earnings only, in such manner as may be provided in its bylaws. The charges incident to a loan, if paid by the borrower, shall be deemed a part of the current expenses.

Associations so desiring may annually or semiannually credit to a reserve fund the net earnings remaining after the payment of expenses and dividends and after crediting the contingent fund with the amount required by law; provided, the amount so credited to the reserve fund in any fiscal year shall not exceed one per centum (1%) of the book value of the outstanding stock. The reserve fund shall not exceed five per centum (5%) of the book value of the outstanding stock. The reserve fund so created may be used for the payment of dividends; provided the amount of the reserve fund so used shall not exceed one per centum (1%) of the book value of the outstanding stock in any year; provided further, that should the contingent fund of an association become exhausted, then no part of the reserve fund may be used for the payment of dividends and in the discretion of such association such reserve fund or the part thereof it shall deem necessary shall be credited to the contingent fund.

Dividends shall be declared semiannually from the net earnings of the association and shall be paid or credited to all stockholders at such time and in such manner as provided in the constitution and bylaws.

Losses in excess of the contingent fund and reserve fund shall be assessed pro rata in the same proportion and manner on all stockholders, to the extent only of their stock credits in such association.

History: En. Sec. 19, Ch. 57, L. 1927; amd. Sec. 1, Ch. 167, L. 1931.

7-122. (6355.21) **Taxation of associations.** Every association shall be assessed for and pay taxes upon all real and personal property owned by such association, and also upon the moneyed capital employed in such business, such moneyed capital to be ascertained by deducting from the amount of bonds, notes and other evidences of indebtedness, including evidences of indebtedness secured by mortgage on real estate or personal property, of such associations, the amount standing to the credit of the members of any such association, upon its books, and any indebtedness representing money borrowed for use as moneyed capital. Said moneyed capital as so ascertained shall be taxed at the same rate and take the same classification as shares of stock in a national bank or moneyed capital coming into substantial competition therewith. The secretary of every such association shall furnish to the assessor of the county in which the principal office of such association is located, within five (5) days after demand therefor, a condensed statement verified by his oath, of the resources and liabilities of such association as disclosed by its books, at twelve o'clock

noon on the first Monday of March in each year; if such secretary shall fail to make the statement hereby required, the assessor shall forthwith obtain such information from any other available source, and for this purpose he shall have access to the books of such association. The assessor shall thereupon make an assessment of the real estate and personal property owned by such association, and of the moneyed capital employed in the business of such association, which assessment shall be as fair and equitable as he may be able to make from the best information available, or said assessor may, for the purpose of said assessment, adopt the figures disclosed by any prior report made by such association to any state or federal officer pursuant to any state or federal law. Any person required by this section to make the statement hereinabove provided, who shall fail to furnish the same, shall be guilty of a misdemeanor and shall be punished accordingly.

The amount standing to the credit of each member of any such association, upon its books, shall be considered and held as the individual credit of each member, and each member shall list the shares held by him for taxation, at their real value in money, in the county of his residence, the same as other credits are listed, except shares from which loans have been made, or money advanced, by the association, and as to such shares they shall be listed for taxation at the net cash value of the stock, to be ascertained by deducting the loan from the cash value of the shares. Associations organized under or controlled by this act shall be subject to taxation in no other way.

History: En. Sec. 20, Ch. 57, L. 1927; amd. Sec. 1, Ch. 62, L. 1929.

Application of Section

This section is a statute for classification of property of building and loan associations for property tax purposes and has nothing to do with corporate license taxation. Home Bldg. & Loan Assn. of Helena v. Fulton, 141 M 113, 375 P 2d 312, 313.

Construction of Section

The amendment of this section by chapter 62, Laws of 1929, relating to the assessment and taxation of building and loan associations, does not in its operation create an unfriendly discrimination in their favor and against national banks and their stockholders, and hence does not come in conflict with section 5219 of the Revised Statutes (12 USC sec. 548). Merchants' Nat. Bank of Glendive v. Dawson County, 93 M 310, 19 P 2d 892.

There is no conflict between this section and sections 7-159 and 84-1501, since they deal with separate and distinct taxes. Home Bldg. & Loan Assn. of Helena v. Fulton, 141 M 113, 375 P 2d 312, 313.

Collateral References

Taxation⊂=132-135.
84 C.J.S. Taxation §§ 157, 158.

7-123. (6355.22) **Annual statements.** Every building and loan association doing business in this state shall, annually on the 30th day of June, or within twenty days thereafter, make a full detailed report, in writing, of the affairs and business of the association for the fiscal year ending on said June 30th, showing its financial condition at the end of said year.

History: En. Sec. 21, Ch. 57, L. 1927.

Collateral References

Building and Loan Associations⊂=1-3.

12 C.J.S. Building and Loan Associations §§ 1-6.

7-124. (6355.23) **Form of statement—where filed.** The statement shall be in such form and contain such information as may be prescribed by the superintendent of banks. It shall be sworn to by the secretary of such

association and its correctness attested by at least three directors or an auditing committee appointed by the board of directors. The original shall be filed with the superintendent of banks within twenty days after the close of the fiscal year, and such an abstract thereof as the superintendent of banks may require shall be posted for sixty (60) days in the office or meeting place of such association, and also published once in the newspaper published in the town in which the association is located, or if no newspaper is published in the town in which association is located, then in one published nearest thereto in the same county, and such proof of publication shall be furnished at such times and in such manner as may be required by the superintendent of banks.

History: En. Sec. 22, Ch. 57, L. 1927.

7-125. (6355.24) **Duties of superintendent of banks.** The superintendent of banks shall examine all building and loan associations doing business in this state at least once a year. Also, whenever ten per cent (10%) [of the holders] of the subscribed stock of any association files a written application with the superintendent of banks, requesting him to make a special examination of any association, he shall make such examination forthwith, and the expense of the examiner making such examination shall be paid by the association examined, and the examiner's finding to be available to the petitioners and the board of directors of the association notwithstanding any provisions to the contrary contained in this act.

History: En. Sec. 23, Ch. 57, L. 1927; amd. Sec. 1, Ch. 81, L. 1955.

Cross-References

Examination by state examiner, sec. 82-1002.

Payments for examinations, sec. 5-909.

Collateral References

Building and Loan Associations⇐2.

12 C.J.S. Building and Loan Associations § 4.

7-126. (6355.25) **Powers of superintendent of banks.** Such superintendent of banks shall have power to prescribe for and supervise uniform system of reports, and accounting for all associations; shall have access to and may compel the production of all books, papers, securities and moneys of any association under examination. He shall have power to administer oaths to and examine the officers and agents of such association and its affairs.

History: En. Sec. 24, Ch. 57, L. 1927.

7-127. (6355.26) **Reports of condition—contents—publication.** Every building and loan association shall make to the superintendent of banks a report of condition whenever requested to do so by the superintendent of banks, according to the form which may be prescribed by him, verified by the oath or affirmation of the president, vice-president, or secretary of such association, and attested by the signature of at least two of the directors. Each such report shall exhibit in detail and under appropriate heads, the resources and liabilities of the association at the close of business on any past day by him specified; and shall be transmitted to the superintendent of banks within five (5) days after the receipt of a request or requisition therefor from him and in such form as may be required by the superintend-

ent of banks it shall be published as soon as possible in a newspaper published in the place where such association is established, or if there be no newspaper published in the place, then in one published nearest thereto in the same county, at the expense of the association; and such proof of publication shall be furnished at such times and in such manner as may be required by the superintendent of banks.

History: En. Sec. 25, Ch. 57, L. 1927.

7-128. (6355.27) **Removal of directors, officers or employees.** Any director, officer or employee of any association found by the superintendent of banks, after examination, to be dishonest, shall be removed from office by the board of directors of such association on the written order of the superintendent of banks, and if the directors neglect or refuse to remove such director, officer or employee, in event any losses accrue to such association thereafter by reason of the dishonesty of such director, officer or employee, such written order of the superintendent of banks shall be deemed to be conclusive evidence of the negligence of the directors failing to act upon the same as herein provided in any action brought against them, or any of them, for recovery of such losses.

History: En. Sec. 26, Ch. 57, L. 1927.

12 C.J.S. Building and Loan Associations § 10.

Collateral References

Building and Loan Associations⇐23 (2).

7-129. (6355.28) **Fees paid into state treasury.** All fees provided for in this act and paid to the superintendent of banks, or secretary of state shall be by them turned into the state treasury for the credit of the general fund of the state of Montana.

History: En. Sec. 27, Ch. 57, L. 1927; amd. Sec. 1, Ch. 10, L. 1931.

Collateral References

Building and Loan Associations⇐1-3.

12 C.J.S. Building and Loan Associations §§ 1-6.

7-130. (6355.29) **Application to other persons, corporations, associations, etc.** The provisions of this act shall apply to and be enforceable against all corporations, persons, firms, partnerships, associations, trustees or combinations of persons whatsoever, whether foreign or domestic, and whether citizens of this state or otherwise, that transact, or attempt to transact, a building and loan business, or a business of like kind, or character, or where, by its or their charter, constitution, bylaws or by a declaration of trust, or other device, or by a contract or agreement, the members or customers are required to pay regular installments to a common fund or series, from which fund or series loans are made to said members, customers, or to others for the purpose of building homes or buildings, purchasing building sites, paying off liens or debts against real estate, or for other purposes, within the boundaries of this state. The name association when used in this act shall be deemed to include any of the above-named.

History: En. Sec. 28, Ch. 57, L. 1927.

12 C.J.S. Building and Loan Associations § 4.

Collateral References

Building and Loan Associations⇐2.

7-131. (6355.30) **Foreign associations — requirements.** Any association as defined in the foregoing section organized under the laws of any state, other than Montana, or of the United States, or of any foreign government, shall, before doing business within this state, file in the office of the secretary of state and in the office of the superintendent of banks, a duly authenticated copy of their charter, articles of incorporation, or articles of agreement, and also a statement, verified by oath of the president and secretary of such corporation or managing officials if other than a corporation and duly verified, showing:

1. The name of such association and the location of its principal office or place of business without this state; and the location of the place of business or principal office within this state;

2. The names and residences of the officers, trustees or directors;

3. The amount of capital stock;

4. The amount of capital invested in the state of Montana.

Such association shall also file, at the same time, and in the same offices, a certificate, under seal and the signature of its president, vice-president, or other acting head, and its secretary, if there be one, certifying that the said association has consented to all the license laws and other laws of the state of Montana relative to foreign associations and has consented to be sued in the courts of this state, upon all causes of action arising against it in this state, and that service of process may be made upon some person, a citizen of this state, whose name and place of residence shall be designated in such certificate, and such service, when so made upon such agent, shall be valid service on the association.

History: En. Sec. 29, Ch. 57, L. 1927.

Collateral References

Building and Loan Associations⇐46 (1-12).

12 C.J.S. Building and Loan Associations § 119.

13 Am. Jur. 2d 257, Building and Loan Associations, §§ 122-126.

7-132. (6355.31) **Consent of agent.** The written consent of the person so designated to act as agent shall also be filed in like manner, and such designation shall remain in force until the filing in the same offices of a written revocation thereof, or of a consent, executed in like manner. A certified copy of a designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof, and conclusive evidence of the authority of the officer executing it.

History: En. Sec. 30, Ch. 57, L. 1927.

Collateral References

Building and Loan Associations⇐46 (11).

12 C.J.S. Building and Loan Associations §§ 119, 120, 122.

7-133. (6355.32) **Contracts void if made before compliance with act.** If any such foreign association shall attempt or commence to do business in this state without having first filed said statement, certificate and consent, required by this act, or without complying with any or all of the laws of Montana relating to the payment of fees or licenses, no contract made by them or any agent or agents thereof, during said time, shall be enforceable by them until the foregoing provisions have been complied with.

History: En. Sec. 31, Ch. 57, L. 1927.

Collateral References

Building and Loan Associations⇐27 (1), (2), 46 (9).

12 C.J.S. Building and Loan Associations § 121.

7-134. (6355.33) **Shares of stock subject to attachment.** The stock or shares of such foreign associations, doing business in this state, shall be subject to attachment in the same manner as now provided by law in the case of domestic associations.

History: En. Sec. 32, Ch. 57, L. 1927.

Cross-Reference

Attachment, sec. 93-4301 et seq.

7-135. (6355.34) **Laws of other states—reciprocity.** When by the laws of any other state, territory or nation any taxes, fines, penalties, licenses, fees, deposits of money or securities or other obligations or prohibitions are imposed on building and loan associations of this state, doing business in such other state, territory or nation, or upon their agents therein, so long as such laws continue in force the same obligations and prohibitions shall be imposed on the associations of such other state, territory or nation doing, or attempting to do a building and loan business, or a business of like kind or character in this state, and upon their agents herein.

History: En. Sec. 33, Ch. 57, L. 1927.

Collateral References

States⇐5½.
81 C.J.S. States § 9.

7-136. (6355.35) **Conformity required.** The powers, rights, duties, privileges and obligations of every such association heretofore and hereafter organized and doing business in the form of a character similar to that authorized by this act, shall be governed, controlled, construed, extended, limited, and determined by the provisions of this act, to the same extent and effect as if said association had been organized and incorporated under or pursuant to its provisions, and the articles of incorporation, bylaws and rules of each heretofore made or existing are hereby modified, altered and amended to conform with the provisions of this act and the same are declared void where such articles of incorporation, bylaws or rules are inconsistent with its provisions; except that the obligations of any existing association, whether between such association and its shareholders or any one of them, or any other person or persons, or any valid contract between the shareholders of such association existing at the time this act takes effect, shall not be in any way impaired by the provisions of this act; and with such exceptions every building and loan association shall possess the powers, rights, duties and privileges, and be subject to the obligations, restrictions and liabilities conferred and imposed by this act, notwithstanding anything to the contrary in its articles of incorporation, bylaws or rules. All obligations to any such association heretofore contracted shall be enforceable by it and in its name and demands, claims and rights of action against any such association shall be enforced against it as fully and completely as they might have been enforced before. Except as above set forth, on and after six months after the passage and approval of this act, no domestic or foreign association now engaged in

the business of a building and loan association, or a business of like character, shall be permitted to conduct such business in this state unless it comply in every respect with the provisions of this act.

History: En. Sec. 34, Ch. 57, L. 1927.

7-137. (6355.36) **Penalties.** It shall be unlawful for any association, whether foreign or domestic, and whether citizens of this state or otherwise, to do business, or attempt to do business, as defined in this act, without having first complied with its provisions and having received a certificate of authority to do business, from the superintendent of banks. Any such association, violating any of the provisions of this act, and failing to comply with any of its provisions, shall be fined not less than two hundred and fifty dollars ($250.00) nor more than one thousand dollars ($1,000.00), for each and every such violation, to be recovered by an action in the name of the state, and on collection, paid into the state treasury. Any person or persons, whether citizens of this state or otherwise, who aids or assists any such association to do business contrary to the provisions of this act, without having first complied with all of its provisions, shall be guilty of a misdemeanor and on conviction thereof shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than six (6) months, or both.

History: En. Sec. 35, Ch. 57, L. 1927.

12 C.J.S. Building and Loan Associations §§ 1-6, 119 et seq.

Collateral References

Building and Loan Associations⇐1-3, 46.

7-138. (6355.37) **Superintendent of banks report.** The superintendent of banks shall keep and preserve in permanent form a full record of his proceedings, including a concise statement of each association examined, and he shall annually make a report to the governor of the general conduct and condition of the building and loan associations doing business in this state, with such suggestions as he may deem expedient. Such report shall also include the information contained in the statement required of the association, and arranged in tabulated form. He shall also report the whole amount of the income of his office, the source whence derived, and the expenses in detail during the year ending on the 30th day of June.

History: En. Sec. 36, Ch. 57, L. 1927.

7-139. (6355.38) **Obtaining property by fraud, false report, refusal to permit inspection of books.** A director, officer, agent, or employee of any building and loan association who:

(1) Willfully receives or possesses himself of any of its property, otherwise than in payment for a just demand, and with intent to defraud, omits to make or cause or direct to be made a full and true entry thereof in its books and accounts; or

(2) Concurs in omitting to make any material entry thereof; or

(3) Willfully makes or concurs in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition, containing any material statement which is false; or

(4) Having the custody or control of its books, willfully refuses or neglects to make any proper entry in the books of such association as required by law, or to exhibit, or allow the same to be inspected and extracts to be taken therefrom by the superintendent of banks, his chief deputy, or any of his examiners, shall be guilty of a felony.

History: En. Sec. 37, Ch. 57, L. 1927.

12 C.J.S. Building and Loan Associations § 11.

Collateral References

Building and Loan Associations⇐23 (5).

7-140. (6355.39) **Purchase of obligations of association by officer.** No director, officer, agent or other employee of any building and loan association shall, directly or indirectly, for his own personal benefit, purchase, or be interested in the purchase of any obligation of said association for a less sum than shall appear upon the books of such association to be the value thereof. Every person violating the provisions of this section shall, for each offense, forfeit to the state three times the face value of any such obligation so purchased.

History: En. Sec. 38, Ch. 57, L. 1927.

7-141. (6355.40) **Purchase of assets of association by officer.** No officer, director, agent, or other employee of any association shall, directly or indirectly, for his own personal benefit, purchase, or be interested in the purchase of any of the assets of any building and loan association for a less sum than the book value thereof. Every person violating any provision of this section, shall, for each offense, forfeit to the state twice the nominal value of any such assets so purchased.

History: En. Sec. 39, Ch. 57, L. 1927.

7-142. (6355.41) **Calculation of profits.** Interest or commissions unpaid, although due or accrued, on debts owing to any building and loan association, shall not be included in calculation of its profits.

History: En. Sec. 40, Ch. 57, L. 1927.

7-143. (6355.42) **Limitation on loans.** The total liabilities of any person, copartnership, or corporation to any association for money borrowed, however secured, including in the liabilities of a copartnership, the liabilities of the several members thereof, shall at no time exceed twenty per centum of the amount of the assets of such association.

History: En. Sec. 41, Ch. 57, L. 1927.

Loans or advances, generally, 13 Am. Jur. 2d 194, Building and Loan Associations, § 51.

Collateral References

Building and Loan Associations⇐26-28.
12 C.J.S. Building and Loan Associations §§ 59-61, 63.

7-144. (6355.43) **Joint ownership.** Any building and loan association may issue shares to or in the name of two or more persons, whether husband and wife or otherwise; withdrawal by any one of such persons, and the receipt or acquittance of any one of such persons shall be valid and sufficient release and discharge to the association for such withdrawals, regardless of the death or disability of any other such joint shareholder.

History: En. Sec. 42, Ch. 57, L. 1927.

12 C.J.S. Building and Loan Associations §§ 16-21, 28.

Collateral References

Building and Loan Associations⇐6-8.

7-145. (6355.44) **Trust—payment.** Whenever any shares of stock shall be purchased in any building and loan association by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the association, in the event of the death of the trustee, the same, or any part thereof, together with the interest or dividends thereon, may be paid to the person for whom said shares were purchased.

History: En. Sec. 43, Ch. 57, L. 1927.

12 C.J.S. Building and Loan Associations §§ 25, 26, 29 et seq.

Collateral References

Building and Loan Associations⇐11-14.

7-146. (6355.45) **Shares held by minor.** Whenever any shares of stock in any building and loan association shall be purchased by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor, and free from the control or lien of all persons whatsoever, except creditors, and shall be paid, with any interest due thereon, to the person in whose name the shares of stock shall have been purchased, and the receipt of such minor shall be sufficient release or discharge for such shares of stock to the association.

History: En. Sec. 44, Ch. 57, L. 1927.

12 C.J.S. Building and Loan Associations §§ 16-21, 28.

Collateral References

Building and Loan Associations⇐11-14.

7-147. (6355.46) **Reports and examinations by superintendent of banks confidential.** Whoever, being the superintendent of banks, assistant or clerk in his employ or an examiner, fails to keep secret the facts and information obtained in the course of an examination, or by reason of his official position, except when the public duty of such officer requires him to report upon or take official action regarding the affairs of the association so examined, or willfully makes a false official report as to the conditions of such association, shall be removed from office and shall be fined not more than five hundred dollars ($500.00), or imprisoned in the penitentiary not less than two (2) years nor more than five (5) years, or both. Nothing in this section shall prevent the proper exchange of information relating to building and loan associations and the business thereof, with the representatives of building and loan departments of other states, but in no case shall the private business or affairs of any individual, association or company be disclosed; provided, that the superintendent of banks on request of any federal home loan bank, shall furnish such bank any information he may have relative to the finances, manner of business, methods of bookkeeping and any and all other information relating to any association which is a member of, seeking to become a member of, a borrower from or seeking to become a borrower from any federal home loan bank.

Also any association and/or the officers or agents thereof and the superintendent of banks and/or his assistants and examiners shall be authorized to do any and all things necessary to enable any building and loan association within this state to become a member of the federal home loan bank of this or any adjoining district so far as may be compatible with the constitution of this state and the laws of the United States.

History: En. Sec. 45, Ch. 57, L. 1927; amd. Sec. 2, Ch. 11, L. 1933.

7-148. (6355.47) **Checking accounts prohibited.** No building and loan association shall carry any demand, commercial or checking account, or receive any sum of money on deposit.

History: En. Sec. 46, Ch. 57, L. 1927.

12 C.J.S. Building and Loan Associations §§ 49-55, 57.

Collateral References

Building and Loan Associations⇐24.

7-149. (6355.48) **Voluntary liquidation and settlement.** By and with the consent of the superintendent of banks any association organized under the laws of and doing business in this state, may, if the stockholders deem it advisable, go into liquidation, and for the purpose of so doing may, at any regular or called meeting of the stockholders, adopt a resolution declaring that such association intends to go into liquidation and discontinue business as a building and loan association. A copy of such resolution, duly certified by the president and secretary of such association, under the seal thereof, shall be transmitted to the superintendent of banks within ten (10) days after the passage thereof. Thereupon the superintendent of banks shall issue his certificate reciting that such resolution has been filed in his office, and that such association is in liquidation. After the filing of such notice, it shall not be lawful for such association to issue stock, or to loan or advance its money to members or to any other person or persons, but all of the income and receipts of such association, in excess of the actual expense of managing the same, shall be applied to pay off first the indebtedness and then the stock in such association upon which no loans have been made, the same to be paid pro rata. The board of directors of such association in liquidation may adopt such rules and make such orders as shall be just and equitable for the sale and disposition of all property held by such association and for the division of the assets of such association. Such association in liquidation, shall be subject to examination and under the supervision of the superintendent of banks.

History: En. Sec. 47, Ch. 57, L. 1927.

Collateral References

Building and Loan Associations⇐45.

12 C.J.S. Building and Loan Associations § 105 et seq.

13 Am. Jur. 2d 234, Building and Loan Associations, § 98 et seq.

Constitutionality, construction, and effect of statutes relating to inspection, dissolution and liquidation of building and loan associations. 78 ALR 1090.

Basis of settlement between building and loan association and borrowing member during solvency of association. 98 ALR 6.

7-150. (6355.49) **Insolvency or impairment of building and loan association—powers of superintendent of banks.** Whenever it shall appear to the superintendent of banks that the affairs of any building and loan association are in an unsound condition, or that it is conducting its business in

an unsafe or unlawful manner, the superintendent of banks may take possession of all books, records and assets of every description of such association and hold and retain the possession of same pending the further proceedings herein specified. Should the board of directors, secretary or person in charge of such association refuse to permit the superintendent of banks to take possession as aforesaid, the superintendent of banks shall communicate such fact to the attorney general, whereupon it shall become the duty of the attorney general at once to institute such proceedings as may be necessary to place the superintendent of banks in immediate possession of the property of such association. Upon taking possession of the effects of the association as aforesaid, the superintendent of banks shall prepare a full and true statement of the affairs and condition of such association, including an itemized statement of its assets and liabilities and shall receive and collect all debts, dues and claims belonging to it and pay the immediate and reasonable expenses of his trust. When the condition of such association has been fully ascertained and it shall appear that the affairs of said association are in fact in an unsound condition the superintendent of banks shall at once notify, in writing, the board of directors of such association of his decision, giving them twenty (20) days in which to restore the affairs of such association to sound condition. Meanwhile, the superintendent of banks shall remain in charge of the books, records, and assets of every description of such association, attend, or be represented, at all directors and stockholders meetings held, suggest such steps as he may deem necessary to restore such association to a sound condition; and if same is not done within such twenty (20) days, he shall report the facts to the attorney general and it shall thereupon become the duty of the attorney general to institute proceedings in the district court of the county in which such association has its principal place of business, for the appointment of the superintendent of banks as receiver and as such he is authorized to collect all moneys due such association and to do such other acts as are necessary to conserve its assets and business, and he shall proceed to liquidate its affairs. He shall have general and inclusive power and authority, except as otherwise limited by the terms of this act, to do any and all acts, to take any and all steps necessary, or, in his discretion, desirable for the protection of the property and assets of such association and the speedy and economical liquidation of its assets and affairs and the payment of its creditors, or for the reopening and resumption of business of said association where that is practicable or desirable. He may institute in his own name as superintendent of banks, or in the name of the association, such suits and actions and other legal proceedings as he deems expedient for such purposes, and by making application to the district court of the county in which such association is located, or to the judge thereof, in chambers, may, upon proper and sufficient showing of cause therefor, procure an order to sell, compromise or compound any bad or doubtful debt or claim, and to sell and dispose of any or all the assets, which sale may be made to stockholders, officers, directors, or others interested in such association, on consent of the court. On such proceedings the association shall be made a party by notice issued on order of the court or judge, in lieu of summons, but served in like manner, and the

hearing of any such application or petition by the superintendent of banks may be had at any time, either in term or vacation in court, or in chambers, as the court may order, after said association has had five (5) days' notice of such application.

History: En. Sec. 48, Ch. 57, L. 1927.

Collateral References

Building and Loan Associations⇐42.

12 C.J.S. Building and Loan Associations § 109 et seq.

13 Am. Jur. 2d 234, Building and Loan Associations, § 98 et seq.

7-151. (6355.50) **Reorganization of associations under liquidation—procedure.** Any association under voluntary liquidation as provided in section 7-149 or which may be under the possession of the superintendent of banks as specified in section 7-150, may resume business as an active building and loan association in the following manner: The directors of such building and loan association by and with the approval of the superintendent of banks, may, upon such terms as may be agreed upon and ratified by the members of such association, reorganize such association and resume business as an active building and loan association. Ratification by members thereof shall be expressed at a regular or special meeting of members duly called for that purpose, at which meeting a majority of the outstanding stock voting, either in person or by proxy, shall be sufficient to adopt such proposal. Notice of such meeting shall clearly indicate the purpose of the meeting.

History: En. Sec. 1, Ch. 4, L. 1935.

Collateral References

Building and Loan Associations⇐43.

12 C.J.S. Building and Loan Associations § 117.

13 Am. Jur. 2d 155, Building and Loan Associations, § 13.

7-152. (6355.51) **Fees of secretary of state—superintendent of banks.** Sections 25-102 and 221, relating to the fees of the secretary of state and state examiner, are hereby made applicable to the fees to be paid by all of the associations mentioned and described in this act.

History: En. Sec. 59, Ch. 57, L. 1927.

NOTE.—Section 221, R. C. M. 1921, above referred to, has been repealed by chapter 89, Laws 1927. Chapter 89, Laws 1927, was a recodification of the banking law and now includes the matter contained in section 221. See sections 5-903 to 5-910.

Collateral References

Building and Loan Associations⇐2.

12 C.J.S. Building and Loan Associations § 4.

7-153. (6356.1) **Associations may make loans on securities authorized by National Housing Act.** Subject to such regulations as may be prescribed by the federal housing administrator, pursuant to an act of Congress cited as the "National Housing Act," approved by the president on the twenty-seventh day of June, A. D. 1934, and all amendments thereto as well as any amendments hereafter duly passed and approved, building and loan associations qualified to do business in this state are hereby empowered to make such loans, secured by mortgages upon real estate, and other advances of credit, to members or others, charges, investments, purchases, sales, contracts for insurance of mortgages and advances of credit and stockholders' accounts and other contracts as are now, or may hereafter be authorized or provided for by said "National Housing Act" and any amendments thereof duly passed and approved.

History: En. Sec. 1, Ch. 38, L. 1935; amd. Sec. 1, Ch. 80, L. 1943.

Compiler's Note

The National Housing Act, referred to in this section, is compiled in the United States Code as Tit. 12, secs. 371, 1422, 1426, 1430, 1431, 1462, 1701, 1702, 1703, 1705, 1706b to 1706d, 1707 to 1709, 1710 to 1715, 1715b to 1715h, 1715k to 1715r, 1715t to 1715y, 1716, 1717 to 1723c, 1724 to 1730b, 1731a to 1731f-1, 1736, 1738, 1739, 1741 to 1746a, 1747 to 1747h, 1747j to 1747l, 1748, 1748b, 1748d to 1748g, 1748h-1 to 1748h-3, 1749aa to 1749ll, 1749aaa to 1749aaa-5, 1750, 1750b, 1750c to 1750e and 1750g; Tit. 41, § 22; Tit. 48, § 484d; Tit. 49, § 22.

Collateral References

Building and Loan Associations⇨28.
12 C.J.S. Building and Loan Associations §§ 60, 61.

7-154. (6356.2) **Exempt from operation of state laws, when.** All loans, charges, investments, advances of credit, purchases, sales, contracts for insurance of mortgages and stockholders' accounts and other contracts made pursuant to the powers in this act granted shall be exempt from the operation and application of the general statutes of this state in conflict with said "National Housing Act" and the regulations issued thereunder.

History: En. Sec. 2, Ch. 38, L. 1935.

Compiler's Note

For compilation of the National Housing Act, referred to in this section, see Compiler's Note under sec. 7-153.

Collateral References

Building and Loan Associations⇨2, 27.
12 C.J.S. Building and Loan Associations § 4.

7-155. (6356.3) **Act applies only to loans, credits, etc., insured under National Housing Act.** The provisions of this act shall apply only to loans, advances of credit, charges, investments, purchases, sales, contracts for insurance of mortgages and advances of credit and accounts of stockholders and other contracts made in connection with and incidental to loans secured by mortgages, and to advances of credit, insured, or to be insured, and accounts insured or to be insured under the provisions of said "National Housing Act" and amendments thereof duly passed and approved.

History: En. Sec. 3, Ch. 38, L. 1935; amd. Sec. 2, Ch. 80, L. 1943.

Compiler's Note

For compilation of the National Housing Act, referred to in this section, see Compiler's Note under sec. 7-153.

7-156. (6374.8) **Conversion of building and loan and other home financing institutions into federal savings and loan associations.** Any building and loan association or other home financing organization by whatever name or style it may be designated, eligible to become a federal savings and loan association may convert itself into a federal savings and loan association by following the procedure hereinafter outlined.

A. At any regular meeting of the shareholders of any such association or at any special meeting of the shareholders of such association in either case called to consider such action and held in accordance with the laws governing such association, such shareholders by an affirmative vote of the majority of said shareholders in person or by proxy may declare by resolution the determination to convert said association into a federal savings and loan association.

B. A copy of the minutes of such meeting of the shareholders verified by the affidavit of the president or vice-president and the secretary of the meeting shall be filed within ten days after said meeting, in the office

or department of this state having supervision of such association. Such verified copy of the minutes of such meeting when so filed shall be presumptive evidence of the holding and of the action of such meeting.

C. Within a reasonable time and without any unnecessary delay after the adjournment of such meeting of shareholders, such association shall take such action as may be necessary to make it a federal savings and loan association and within ten days after receipt of the federal charter there shall be filed in the office or department of this state having supervision of such association a copy of said charter issued to such association by the federal home loan bank board or a certificate showing the organization of such association as a federal savings and loan association certified by, or on behalf of, the federal home loan bank board. Upon the filing of such instrument such association shall cease to be a state association and shall thereafter be a federal savings and loan association.

History: En. Sec. 1, Ch. 174, L. 1935.

Collateral References

Building and Loan Associations⇐43.

12 C.J.S. Building and Loan Associations § 117.

13 Am. Jur. 2d 155, Building and Loan Associations, § 14.

7-157. (6374.9) **Effect of conversion of association—powers and privileges.** At the time when such conversion becomes effective as hereinbefore provided, said association shall cease to be supervised by this state and all of the property of such association including all of its right, title and interest in and to all property of every kind and character whether real, personal or mixed shall immediately by operation of law and without any conveyance or transfer whatsoever and without any further act or deed, continue to be vested in said association under its new name and style as a federal savings and loan association and under its new jurisdiction; and said federal savings and loan association shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held and enjoyed by it as a state association and said federal savings and loan association at the time of the taking effect of such conversion shall continue responsible for all of the obligations of said state association to the same extent as though said conversion had not taken place; it being expressly declared that the said federal savings and loan association shall be merely a continuation of the said state association under a new name and new jurisdiction and such revision of its corporate structure as may be considered necessary for its proper operation under said new jurisdiction.

History: En. Sec. 2, Ch. 174, L. 1935.

7-158. Associations empowered to make loans guaranteed under Servicemen's Readjustment Act of 1944. All building and loan associations organized under the laws of the state of Montana are hereby empowered to make any loan which is guaranteed in whole or in part by the United States or any federal agency or federal instrumentality thereof, under the Servicemen's Readjustment Act of 1944 or any amendment thereto, enacted by the Congress of the United States, provided such loan shall be secured by either a first or second mortgage on real estate.

History: En. Sec. 1, Ch. 35, L. 1945.

Compiler's Note

The Servicemen's Readjustment Act of 1944, referred to in this section, was repealed by act of Congress September 2, 1958, Public Law 85-857, § 1, 72 Stat. 1268.

7-159. Act controlling. In so far as the provisions of this act are inconsistent with the provisions of any other law governing building and loan associations, the provisions of this act shall control.

History: En. Sec. 2, Ch. 35, L. 1945.

Construction of Section

There is no conflict between this section and sections 7-122 and 84-1501, since they deal with separate and distinct taxes. Home Bldg. & Loan Assn. of Helena v. Fulton, 141 M 113, 375 P 2d 312, 313.

TITLE 8

CARRIERS AND CARRIAGE

Chapter 1. Motor carriers—license and regulation, 8-101 to 8-130.
2. Pipeline carriers of oil—regulation, 8-201 to 8-211.
3. Navigation—inspection of boats and vessels, Repealed—Section 1, Chapter 129, Laws of 1947.
4. Carriers of persons, property and messages—duties and obligations, 8-401 to 8-419.
5. Bills of lading, Repealed—Section 10-102, Chapter 264, Laws of 1963.
6. Freightage—rights and duties of carrier, consignor and consignee, 8-601 to 8-609.
7. Common carriers in general, 8-701 to 8-710.
8. Common carriers of persons, property and messages, their rights and obligations, 8-801 to 8-822.
(Note: See Railroads, Title 72.)

CHAPTER 1

MOTOR CARRIERS—LICENSE AND REGULATION

Section 8-101. Definition of terms.
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8-129. Board may compel carrier bus lines to furnish service.
8-130. Board may grant temporary certificates, when.

8-101. (3847.1) **Definition of terms.** Unless the language or context clearly indicates that different meanings are intended, the following words, terms and phrases shall, for the purposes of this act, be given the meanings hereinafter subjoined to them.

(a) The word "board" means the board of railroad commissioners of the state of Montana.

(b) The term "corporation" means a corporation, company, association or joint-stock association.

(c) The term "person" means an individual, firm or copartnership.

(d) The word "certificate" means the certificate of public convenience and necessity authorized to be issued under the provisions of this act.

(e) The term "public highway" means every public street, road, highway, or way in this state.

(f) The term "motor vehicle" shall include all vehicles or machines propelled by any power other than muscular used upon the public highways for the transportation of persons and/or property.

(g) The words "between fixed termini or over a regular route" when used in this act, mean the termini or route between or over which any motor carrier usually or ordinarily operates any motor vehicles, even though there may be periodical or irregular departures from said termini or route. Whether or not a motor vehicle is operated by a motor carrier between fixed termini, or over a regular route, or otherwise, within the meaning of this act, shall be a question of fact to be determined by the board.

(h) The term "motor carrier," when used in this act, means every person or corporation, their lessees, trustees, or receivers appointed by any court whatsoever, operating motor vehicles upon any public highway in the state of Montana for the transportation of persons and/or property for hire, on a commercial basis either as a common carrier or under private contract, agreement, charter, or undertaking; provided that nothing in this act shall be construed as affecting motor vehicles used in carrying property consisting of ordinary livestock or agricultural commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation, or, the operation of school buses which are used in conveying school children to and from district or other schools, or the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by any person, firm or corporation engaged exclusively in the construction or maintenance of highways, or engaged exclusively in logging or mining operations, in so far as the use of employees, supplies and materials in construction and production is con-

cerned, or the transportation of property by motor vehicle within any city, town, or village with a population, according to the latest United States census, of less than five hundred persons, or within the commercial areas thereof as determined by the board.

(i) The words "for hire" mean for remuneration of any kind, paid or promised, either directly or indirectly, or received or obtained through leasing, brokering or buy-and-sell arrangements whereby a remuneration is obtained or derived for transportation service. An accommodative transportation movement by a person not in the transportation business shall not be construed as a service for hire, even though the persons owning the property transported or persons transported share in the cost or pay for the movement. Nothing in this act shall be construed so as to prevent bona fide leases, brokerage agreements or buy-and-sell agreements.

(j) The word "compensation," as used in this act, shall mean the charge imposed upon motor carriers in consideration of the use of the highways in this state by such motor carriers, as provided in section 8-116.

(k) The word "railroad" means the movement of cars on rails, regardless of the motive power used therefor.

History: En. Sec. 1, Ch. 184, L. 1931; amd. Sec. 1, Ch. 153, L. 1943; amd. Sec. 1, Ch. 262, L. 1947; amd. Sec. 1, Ch. 204, L. 1963.

Cross-Reference

Bus lines operated by cities or towns, secs. 11-1019, 11-1020.

Constitutionality

The Motor Carrier Act, regulating the use of state highways by motor carriers for hire, is a valid enactment as against the contentions of a private contract carrier that by requiring him to obtain from the state board of railroad commissioners a certificate of public convenience and necessity, the act is invalid, as denying him the right to contract, and offending against the equal protection of the law and the due process of the law clauses of the constitution. (Justices Ford and Angstman dissenting.) Barney v. Board of Railroad Commrs., 93 M 115, 125, 17 P 2d 82; Fulmer v. Board of Railroad Commrs., 96 M 22, 25, 28 P 2d 849.

The Motor Carrier Act is not violative of section 23, article V of the constitution, nor is it rendered unconstitutional as special legislation (section 26, article V of the constitution). State v. Healow, 98 M 177, 38 P 2d 285.

The Motor Carrier Act is not unconstitutional as offending against the provisions of sections 23 and 26, article V of the constitution, with relation to defect of title and the enactment of special laws, by the provision in section 14 of chapter 184, Laws 1931 (8-114) as to the county in which a suit for injunction for the enforcement of the act may be brought. Great Northern Ry. Co. v. Hatch 98 M 269, 277, 38 P 2d 976.

Application of Act

The Motor Carrier Act was intended to apply to all intrastate and interstate motor carriers operating over state highways. Board of Railroad Commrs. v. Aero Mayflower Transit Co., 119 M 118, 172 P 2d 452, 459, affirmed in 332 U S 495, 92 L Ed 99, 68 S Ct 167.

Discretion of Board in Granting Certificate

The requirement of this chapter that one desiring to operate a motor vehicle for hire must secure a certificate of convenience and necessity carried with it a discretion on the part of the board of railroad commissioners to refuse it if in its judgment it is unwise to grant it; hence the contention that it has no power to deny it to one qualified and capable to furnish adequate service is without merit. Fulmer v. Board of Railroad Commrs., 96 M 22, 25, 28 P 2d 849.

Evasion of Regulatory Act

The attempt to evade the regulation of motor transportation and requiring certificates of public convenience provided in sections 8-101 et seq. through the formation of a corporation or association, courts will go behind the form of subterfuge or scheme to the substance. Board of Railroad Commrs. v. Reed, 102 M 382, 385, 58 P 2d 271.

Grounds for Denying Certificate

Under this chapter, making it incumbent upon the board of railroad com-

missioners in passing on an application for a certificate to operate motor vehicles for hire, to give "reasonable consideration" to existing transportation facilities, including railroads, the general rule is that the certificate should be denied, unless the service furnished is inadequate, or additional service would benefit the general public, or unless the existing carrier has been afforded an opportunity to furnish such additional service as may be required. Fulmer v. Board of Railroad Commrs., 96 M 22, 25, 28 P 2d 849.

Highways Belong to People

The state highways belong to the people for use in the ordinary way; their use for the purpose of gain is special and extraordinary, which the state may prohibit altogether or permit on such conditions as it may deem proper to impose. Barney v. Board of Railroad Commrs., 93 M 115, 125, 17 P 2d 82.

"Motor Carrier" for Hire

A person who transports merely himself or his own property by means of a motor vehicle is not a "motor carrier," for hire, even though he may be compensated directly or indirectly, within the meaning of this act, so far as it requires a certificate of public convenience and necessity, but one who engages in the transportation of goods for another as an independent calling, under contract and for compensation, is such a carrier. Board of Railroad Commrs. v. Gamble-Robinson Co., 111 M 441, 450, 111 P 2d 306.

Persons Required To Procure Certificate

As a means of protecting its highways from abusive use, and the public from the evils incident to unregulated competition, the state has the power to require both common and private motor carriers for hire to obtain from the state railroad commission certificates of public convenience and necessity as a condition precedent to the right to conduct such business. Barney v. Board of Railroad Commrs., 93 M 115, 125, 17 P 2d 82.

The provisions of the Motor Carrier Act relating to the persons who must procure certificates of convenience and necessity before they may operate a motor vehicle for hire, are broad enough to include the driver thereof, employed by its owner to operate it (whether such owner be an individual or corporation), and that therefore, in a prosecution against owner and driver, contention that a penalty for a violation of the act could not be imposed upon the latter, may not be sustained. (Mr. Justice Angstman dissenting.) State v. Healow, 98 M 177, 186, 38 P 2d 285.

Purpose of Statute

In the construction of the Motor Carrier Act (8-101 et seq.), the purpose of which is the supervision, regulation and control of the state highways by motor carriers for hire, a matter of legislative discretion, all existing statutes relating to their use must be taken into consideration. Barney v. Board of Railroad Commrs., 93 M 115, 125, 17 P 2d 82.

Regulations Held Reasonable

The use of the public highways is special and extraordinary and generally may be regulated by the state, and regulation by means of certificates of public convenience (8-101 et seq.) is reasonably devised to protect the public from abusive use of roads, and evils incident to unregulated competition. Board of Railroad Commrs. v. Reed, 102 M 382, 384, 58 P 2d 271.

Title—Term "Engaged in" Construed

The term "engaged in," as used in the title of the Motor Carrier Act (8-101 et seq.), means one who has "embarked in" the business of "transportation by motor vehicles of persons and property for hire"; to hold that persons engaged in carrying on other businesses and employing motor vehicles for transporting their own goods included within its meaning, the act would offend against section 23, article V, of the state constitution providing that if any subject be embraced in an act not expressed in its title, the act shall be void as to the part not so expressed, because the title would not have given notice to the public or legislature of intent to regulate such persons. Board of Railroad Commrs. v. Gamble-Robinson Co., 111 M 441, 448, 111 P 2d 306.

References

Christie Transfer & Storage Co. v. Hatch, 95 M 601, 603, 28 P 2d 470.

Collateral References

Automobiles⇨1.
60 C.J.S. Motor Vehicles §§ 1-8.

Duty and liability of carrier of passengers for hire by automobile. 4 ALR 1499; 31 ALR 1202; 45 ALR 297; 69 ALR 980 and 96 ALR 727.

Carrier-passenger relationship as between railroad and express company employee. 36 ALR 2d 1412.

8-102. (3847.2) **Classification of motor carriers—operation according to provisions of act required.** (a) Motor carriers are hereby divided into three (3) classes for the purposes of this act, to be known as:

Class A motor carriers,
Class B motor carriers,
Class C motor carriers.

Class A motor carriers shall embrace all motor carriers operating between fixed termini or over a regular route, under regular rates or charges, based upon either station-to-station rates or upon a mileage rate or scale.

Class B motor carriers shall embrace all motor carriers operating under regular rates or charges based upon either station-to-station rates or upon a mileage rate or scale, and not between fixed termini or over a regular route.

Class C motor carriers shall embrace all motor carriers operating motor vehicles for distributing, delivering or collecting wares, merchandise, or commodities, or transporting persons, where the remuneration is fixed in and the transportation service furnished under a contract, charter, agreement or undertaking.

(b) It shall be unlawful for any corporation or person, its or their officers, agents, employees, or servants, to operate any motor vehicle for the transportation of persons and/or property for hire on any public highway in this state except in accordance with the provisions of this act.

History: En. Sec. 2, Ch. 184, L. 1931.

References

Board of Railroad Commrs. v. Gamble-Robinson Co., 111 M 441, 443, 111 P 2d 306.

Collateral References

Automobiles⇐76.
60 C.J.S. Motor Vehicles § 46.
37 Am. Jur. 537, Motor Transportation, §§ 24 et seq.; 43 Am. Jur. 700, Public Utilities and Services, §§ 193 et seq.

Extension to carriers by motorbus of statutes or regulations respecting separate compartments or other accommodations for white and Negro passengers. 66 ALR 1203.

Constitutionality of legislative delegation of powers to prescribe or vary regulations concerning motor vehicles used on highways. 87 ALR 546.

Public service commission's jurisdiction over issue of certificates or permits to carriers transporting by motorbuses. 103 ALR 268, 287.

Validity and applicability of statutes relating to use of highway by private motor carriers and contract motor carriers for hire. 109 ALR 550; 175 ALR 1333.

8-103. (3847.3) **Board of railroad commissioners to supervise and regulate motor carriers—appointment and duties of supervisor.** (a) The board of railroad commissioners is hereby vested with power and authority, and it is hereby made its duty to supervise and regulate every motor carrier in this state; to fix specific, just, reasonable, equal and nondiscriminatory rates, fares, charges and classifications for class A and class B motor carriers; to regulate the properties, facilities, operations, accounts, service, practices, affairs and safety of operations of all motor carriers; to require the filing of annual and other reports, tariffs, schedules, or other data by such motor carriers and to supervise and regulate motor carriers in all matters affecting the relationship between such motor carriers and the traveling and shipping public. The board shall have power and authority by general order or otherwise to prescribe rules and regulations in conformity with this act applicable to any and all motor carriers.

(b) The board shall appoint a supervisor of motor carriers who shall have general responsibility to it for enforcement of the provisions of this

act. The supervisor shall direct all enforcement activities in behalf of the board, including the investigation and prosecution of violations of this act or the rules, regulations or orders prescribed thereunder by the board. The supervisor shall be either an attorney admitted to practice law in the state of Montana, or a person qualified by at least five (5) years of suitable experience and training in appropriate phases of the motor carrier industry; he shall serve at the pleasure of the board and at an annual salary to be set by the board. The supervisor, and whatever field inspectors may be employed by the board to assist him, shall be deemed peace officers for the purpose of making arrests in connection with violations of this act, and issuing summonses, accepting bail and serving warrants of arrest. The supervisor and field inspectors are empowered to make reasonable inspections of cargoes carried by commercial motor vehicles and require production of manifests, bills of lading, leases and other documents relating to the cargo, routing or ownership of such vehicles.

(c) All rules and regulations in relation to schedules, service, tariffs, rates, facilities, accounts and reports shall have due regard for the differences existing between class A, class B, and class C motor carriers as herein defined, and shall be just, fair and reasonable to the said classes of motor carriers in their relations to each other and to the public. In fixing the tariff or rates to be charged by class A and class B motor carriers for the carrying of persons and/or property, the board shall take into consideration the kind and character of service to be performed, the public necessity therefor, and the effect of such tariff and rates upon other transportation agencies, if any, and as far as possible avoid detrimental or unreasonable competition with existing railroad service or service furnished by a motor carrier.

History: En. Sec. 3, Ch. 184, L. 1931; amd. Sec. 1, Ch. 205, L. 1963.

Discretionary Appointment

Taxpayer-citizen was not entitled to an injunction in an action questioning the qualifications of a supervisor appointed by the board of railway commissioners in proper exercise of their discretion. Steel v. Board of Railroad Commrs., 144 M 432, 397 P 2d 101.

References

Board of Railroad Commrs. v. Gamble-Robinson Co., 111 M 441, 444, 111 P 2d 306.

8-104. (3847.4) Repealed—Chapter 201, Laws of 1961.

Repeal

This section (Sec. 4, Ch. 184, L. 1931; Sec. 1, Ch. 262, L. 1955), relating to rates and schedules, was repealed by Sec. 7, Ch. 201, L. 1961.

8-104.1. Board's duty to fix rates. It shall be the duty of the board to fix, alter, regulate and determine just, fair, reasonable, nondiscriminatory, and sufficient rates, fares, charges, classifications, and rules of service for the operation of class A and B motor carriers within this state. The board also may fix and determine reasonable maximum or minimum rates for the operations of any class C motor carrier when the same are required for the best interests of public transportation.

History: En. Sec. 1, Ch. 201, L. 1961.

Collateral References

Automobiles⇨121.

60 C.J.S. Motor Vehicles § 54.

37 Am. Jur. 545, Motor Transportation, § 39; 43 Am. Jur. 715, Public Utilities and Services, § 216 et seq.

8-104.2. Rate schedules, filing with board. Every class A or B motor carrier holding a certificate must maintain on file with the board a full and complete schedule of its rates, fares, charges, classifications, rules of service, and any and all tariff provisions relating to such rates, fares, charges, classifications, or rules. Every schedule on file with and approved by the board on the effective date of this act shall remain in full force and effect until changed or modified by the board or by the carrier with the approval of the board.

No change, modification, alteration, increase, or decrease in any rate, fare, charge, classification, or rule of service shall be made by any motor carrier without first obtaining the approval of the board. The board shall prescribe rules and/or regulations providing for the form and style of all schedules and tariffs and for the procedures to be followed in filing or publishing any changes or modifications of the same.

History: En. Sec. 2, Ch. 201, L. 1961.

Compiler's Note

The effective date of this act was March 7, 1961.

8-104.3. Deviation from rate schedules unlawful. It shall be unlawful for any class A or B motor carrier to charge, demand, receive, or collect any greater or less rate, charge or fare than that fixed by the board for the transportation service provided. When maximum or minimum rates have been established for any service provided by any class C motor carrier, it shall likewise be unlawful for such carrier to charge, demand, receive, or collect any greater compensation or rate than that established for the service by any applicable maximum rate, or any less compensation or rate than that established by any applicable minimum rate. It also shall be unlawful for any class A or B motor carrier, or any class C motor carrier subject to maximum or minimum rates, to refund or remit in any manner or by any device any portion of the rates, fares, and charges required to be collected under the schedule of the class A or B carrier on file with the board or under the maximum or minimum rates established by the board for the class C carrier.

History: En. Sec. 3, Ch. 201, L. 1961.

8-104.4. Rate preference, discrimination forbidden. All rates, fares, charges, classifications, or rules of service for the transportation of property and/or persons upon the public highways of this state must be fair, just, reasonable, and nondiscriminatory, and no motor carrier operating under established rates shall make, give, or permit any undue preference or advantage to any particular person, company, partnership, corporation or locality, or any particular description of traffic, nor shall such motor carrier subject any particular person, company, partnership, corporation, or locality, or any particular description of traffic, to any prejudice or disadvantage in any respect.

The board may, upon its own initiative or upon the complaint of any interested party, investigate any rate, fare, charge, classification, or rule of service contained in the schedule of any motor carrier; if the board shall

find, after such investigation, that any such rate, fare, charge, classification, or rule of service is unfair, unjust, unreasonable, or discriminatory, it shall disallow the same and fix a rate, fare, charge, classification, or rule of service which shall be fair, just, reasonable, and nondiscriminatory, and it shall order the affected motor carrier or carriers to conform to such modified schedule; provided however, that each motor carrier affected by any complaint or investigation shall first be given notice of the same and an opportunity to be heard before the board.

History: En. Sec. 4, Ch. 201, L. 1961.

8-104.5. Changes, revisions of rate schedules, how made. No motor carrier shall change or revise any rate, fare, charge, classification, or rule of service contained in its schedule without first obtaining approval therefor from the board. Such changes or revisions shall be made by filing with the board the tariff sheet or sheets containing such changes or revisions, plainly stating the change or changes, or revision or revisions, to be made; provided further, that the public shall be provided with such notice of the proposed changes or revisions as the board shall, by rule, require. The tariff sheet or sheets containing such changes or revisions shall be deemed approved and effective thirty (30) days after the same are filed unless the proposed revisions or changes are suspended or disallowed by the board prior to the expiration of the thirty (30) day period; provided however, that the board may, for good cause, allow any change or revision to become effective on less than thirty (30) days after the filing thereof.

Upon its own initiative, or upon the complaint of any interested party filed with the board within fifteen (15) days after the date upon which a change or revision of any rate, fare, charge or classification is filed with the board, the board may suspend the operation of such rate, fare, charge, or classification for a period not to exceed one hundred and twenty (120) days, provided however that the order directing such suspension must be issued by the board not less than two (2) business days prior to the proposed effective date; and provided further, that the motor carrier or carriers filing such rate, fare, charge, or classification shall be given prompt notice by the board of any complaint filed by any interested party to any proposed tariff change or revision and such carrier or carriers also shall be given an opportunity to reply to any such complaint. If the proposed change or revision is in a tariff issued by a tariff publishing bureau for a motor carrier or carriers, notice to such bureau of any complaint will constitute notice to the participating carriers in such tariff. When the suspension of any proposed change or revision in a tariff is ordered by the board, it shall also order a public hearing to consider the reasonableness of the proposed change or revision; due notice shall be given for such hearing to all known interested or affected persons and the same shall be allowed to appear and present evidence. After considering the evidence presented at such hearing, the board shall issue an order approving, denying, or modifying the proposed change or revision; provided however, that unless such hearing is held and such order is issued within one hundred and twenty (120) days from the date upon which the

suspension was ordered, the proposed change or revision shall be deemed approved and effective as filed.

History: En. Sec. 5, Ch. 201, L. 1961.

8-104.6. Recovery of excess charges. Any sum or amount of money paid to any motor carrier in excess of the rates, fares, or charges established for such service by the board may be recovered from such carrier by the person or shipper who paid the same in any action brought in the district court of the county in which such payment was made, provided that any such action must be brought within two (2) years from the date of such payment. No contract or agreement, written or otherwise, between such person or shipper and any motor carrier, shall be admissible in evidence for the purpose of showing a waiver of the right given by this section. If upon the trial of such action, it shall satisfactorily appear to the court or jury that such overcharge was willfully made, the person or shipper bringing the said action shall be awarded damages in treble the amount of such excess or overcharge, together with the costs and expenses of such action, including a reasonable attorney's fee, to be taxed and collected as other costs in the action.

History: En. Sec. 6, Ch. 201, L. 1961.

8-105. (3847.5) **Order of board required for discontinuance of service.** No class A or class B motor carrier shall abandon or discontinue any service established under this act without an order of the board therefor.

History: En. Sec. 5, Ch. 184, L. 1931.

Collateral References

Automobiles⊂⊃11.
60 C.J.S. Motor Vehicles §§ 44, 56.

Right of public utility to discontinue line or branch on ground that it is unprofitable. 10 ALR 2d 1121.

8-106. (3847.6) **Repealed—Chapter 201, Laws of 1961.**

Repeal

This section (Sec. 6, Ch. 184, L. 1931), relating to discrimination in rates, was repealed by Sec. 7, Ch. 201, L. 1961. For new provisions, see sec. 8-104.4.

8-107. (3847.7) **Revocation of certificate or privilege after hearing—right of review.** The board may at any time, by its order duly entered, after a hearing had upon reasonable notice to the holder of any certificate or privilege hereunder and an opportunity to such holder to be heard, at which it shall appear that such holder violated, violates, or refuses to observe any of the board's orders, rules, or regulations, or any provision of this act, suspend, revoke, alter, or amend any certificate or privilege issued under the provisions of this act; but the holder of any such certificate or privilege shall have all rights of rehearing and review, as to such order of the board, as is provided in this act.

History: En. Sec. 7, Ch. 184, L. 1931.

Hearing Required

Cancellation of a person's certificate without giving him notice or an opportunity to appear or to show cause why it should not be canceled, deprive such person of the right to operate as a motor carrier and was in violation of this section and also was in violation of section 27, article III of the Montana constitution by depriving him of a property right without due process of law. State ex rel. Daniels v. Board of Railroad Commrs., 131 M 9, 306 P 2d 264.

Petition for Rehearing

Montana board of railroad commissioners granting motor carrier's application for certificate of convenience and necessity and granting railroad carrier's application to discontinue rail passenger service, held not shown to be without authority to grant rehearing, notwithstanding change in membership of board, where petition for rehearing was filed before conditions in board's order had been fulfilled; in suit for injunctive relief, equity rule dispensing with necessity for reply held applicable, except as to allegations in respect to petition for rehearing and what was done about it, in absence of agreement between counsel that allegations of answer were admitted. Northern Pacific Ry. Co. v. Board of Railroad Commrs., 13 F Supp 529, 532.

Collateral References

Automobiles⇨106.
60 C.J.S. Motor Vehicles § 131.

8-108. (3847.8) **Certificate required of class A motor carriers—contents of application—fee.** (a) No class A motor carrier, as in this act defined, shall hereafter operate for the transportation of persons and/or property for hire on any public highway in this state without first having obtained from the board, under the provisions of this act, a certificate declaring that public convenience and necessity require such operation.

(b) A motor carrier making application for such certificate shall do so in writing, separately for each route, which petition shall be verified by the applicant and shall specify the following matters:

1. The name and address of the applicant and the names and addresses of its officers, if any.

2. The public highway or highways over which, and the fixed termini between which, or the regular route or routes over which it intends to operate.

3. The kind of transportation, whether passenger or freight, or both, together with a full and complete description of the character of the vehicle or vehicles to be used, including the seating capacity of any vehicle to be used for passenger traffic and the tonnage capacity of any vehicle to be used in freight traffic.

4. The proposed time schedule.

5. A schedule of the tariff or rates desired to be charged for the transportation of freight and/or passengers.

6. A complete and detailed description of the property proposed to be devoted to the public service.

7. A detailed statement showing the assets and liabilities of such applicant.

8. And such other or additional information as the board may by order require.

(c) Such application shall be accompanied by a filing fee of fifteen dollars ($15.00) to thirty-five dollars ($35.00) to be set by the board based on the number of counties for which the certificate is requested.

History: En. Sec. 8, Ch. 184, L. 1931; amd. Sec. 22, Ch. 121, L. 1965.

Collateral References

Automobiles⇨77.
60 C.J.S. Motor Vehicles § 82.
37 Am. Jur. 529, Motor Transportation, § 10 et seq.

When granting or refusing certificate of necessity or convenience for operation of motorbuses justified. 67 ALR 957.

State requirements as to certificate of convenience and necessity as interference with interstate commerce. 85 ALR 1136, 1138; 109 ALR 1245 and 135 ALR 1358.

Public service commission's jurisdic-

tion over issue of certificates or permits to carriers transporting by motorbuses. 103 ALR 268, 287.

Certificates by state authorizing operation of motorbus lines over section of highway as affected by its subsequent annexation to city. 154 ALR 1440.

Carrier's certificate of convenience and necessity, franchise, or permit as subject to transfer or encumbrance. 15 ALR 2d 883.

8-109. (3847.9) **Certificate required of class B motor carriers—contents of application—fee.** (a) No class B motor carrier, as in this act defined, shall hereafter operate for the transportation of persons and/or property for hire on any public highway, in this state, without first having obtained from the board, under the provisions of this act, a certificate that public convenience and necessity require such operations.

(b) A motor carrier making application for such permit shall do so in writing, separately for each locality for which consideration is desired, which petition shall be verified and shall specify the following matters:

1. Name and address of the applicant and the names and addresses of its officers, if any.

2. The kind of transportation, whether passenger or freight, or both, together with a full and complete description of the character of the vehicle or vehicles to be used, including the seating capacity of any vehicle to be used for passenger traffic and the tonnage capacity of any vehicle to be used in freight traffic.

3. The locality and character of operations to be conducted.

4. A schedule of the tariff of rates desired to be charged for the transportation of freight and/or passengers.

5. A complete and detailed description of the property proposed to be devoted to the public service.

6. A detailed statement showing the assets and liabilities of such applicant.

7. And such other or additional information as the board may by order require.

(c) Such application shall be accompanied by a filing fee of fifteen dollars ($15.00) to thirty-five dollars ($35.00) to be set by the board based on the number of counties for which the certificate is requested.

History: En. Sec. 9, Ch. 184, L. 1931; amd. Sec. 23, Ch. 121, L. 1965.

Carrier's certificate of convenience and necessity, franchise, or permit as subject to transfer or encumbrance. 15 ALR 2d 883.

Collateral References

Automobiles⇐77.
60 C.J.S. Motor Vehicles § 82.

8-110. (3847.10) **Certificate required of class C motor carriers—contents of application—fee.** (a) No class C motor carrier as in this act defined, shall hereafter operate for the distribution, delivery, or collection of goods, wares, merchandise, or commodities, or for the transportation of persons on any public highway in this state, without first having obtained from the board, under the provisions of this act, a certificate that public convenience and necessity require such operation.

(b) A motor carrier making application for such permit shall do so in writing, separately for each route or locality for which consideration is

desired, which petition shall be verified by the applicant and shall specify the following matters:

1. The name and address of the applicant and the names and addresses of its officers, if any.

2. The public highways or highways over which and the fixed termini between which, or the route or routes over which it intends to operate, if the same are fixed; or the particular city, town, station, or locality from and/or to which the applicant intends to operate.

3. The kind of transportation, the character of the goods, wares, merchandise, or commodities to be distributed, delivered or collected, together with a full and complete description of the character of the vehicle or vehicles, including the rated tonnage capacity of such vehicles, to be used in such service of distribution, delivery or collection.

4. And such other or additional information as the board may by order require.

(c) Such application shall be accompanied by a fee of fifteen dollars ($15.00) to thirty-five dollars ($35.00) to be set by the board based on the number of counties for which the certificate is requested.

History: En. Sec. 10, Ch. 184, L. 1931; amd. Sec. 24, Ch. 121, L. 1965.

Application of Section

This section does not contemplate the inclusion of those engaged in other businesses, and using motor vehicles solely for the incidental purpose of delivering and transporting their own goods and merchandise in the course of such businesses. Board of Railroad Commrs. v. Gamble-Robinson Co., 111 M 441, 443, 111 P 2d 306.

Collateral References

Automobiles⇐81-84.
60 C.J.S. Motor Vehicles § 92.

Carrier's certificate of convenience and necessity, franchise, or permit as subject to transfer or encumbrance. 15 ALR 2d 883.

8-111. (3847.11) **Hearing to consider applications — notice — matters considered—manner of conducting hearings.** Upon the filing of such application by a class A or class B or class C motor carrier, the board shall fix a time and place for hearing thereon, which shall not be less than ten (10) days after such filing. The board shall cause a copy of such petition and notice of hearing thereon to be served upon an officer or owner of any motor carrier that in the opinion of the board might be affected by the granting of any such certificate and upon any railroad company operating into or through any town or city located on the proposed route of the applicant, and upon the state highway commission, at least ten (10) days before the date of hearing, and any such motor carrier or railroad company, and the state highway commission, and the governing board or boards of any such county, town or city into or through which such route or service as proposed may extend, and any person or corporation concerned are hereby declared to be interested parties to such proceedings, and may offer testimony for or against the granting of such certificate. If after hearing upon application for a certificate, the board shall find, from the evidence, that public convenience and necessity require the authorization of the service proposed, or any part thereof as the board shall determine, a certificate therefor shall be issued. In determining whether or not a certificate should be issued, the board shall give reasonable consideration to the transportation service being furnished or that will be furnished by

any railroad, or other existing transportation agency, and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout twelve (12) months of the year and the effect which such proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby. Provided, however, that an application by a class A or a class B or a class C motor carrier for a certificate may be disallowed without a public hearing thereon when it appears from the records of the board that the route or territory sought to be served by the applicant has previously been made the basis of a public investigation and finding by the board that public convenience and necessity do not require such proposed motor carrier service unless it is made to affirmatively appear in the application by a recital of the facts that conditions obtaining over said route or in said territory and affecting transportation facilities therein have materially changed since said public investigation and finding and that public convenience and necessity do now require such motor carrier operation.

Provided further that any investigation, inquiry or hearing which the board has power to undertake or to hold, under the provisions of this act, may be undertaken or held by or before any member of the board, or by and before any agent or examiner of the board designated for the purpose by the board, and every finding, order, or decision made by a member of the board, or agent or examiner of the board so designated, together with a statement in writing of the reasons therefor which statement must be included in such finding, or order or decision, pursuant to such investigation, inquiry or hearing, when approved and confirmed by the board and ordered filed in its office, shall be, and be deemed to be the finding, order or decision of the board; provided also, that any agent or examiner of the board designated as aforesaid, shall have power to administer oaths, examine witnesses and receive evidence.

History: En. Sec. 11, Ch. 184, L. 1931; amd. Sec. 1, Ch. 101, L. 1955.

Petition for Rehearing

Montana board of railroad commissioners granting motor carrier's application for certificate of convenience and necessity and granting railroad carrier's application to discontinue rail passenger service was not shown to be without authority to grant rehearing, notwithstanding change in membership of board, where petition for rehearing was filed before conditions in board's order had been fulfilled. Northern Pacific Ry. Co. v. Board of Railroad Commrs., 13 F Supp 529, 532.

Transportation of Petroleum Products

A certificate of public convenience and necessity was properly granted for the transportation of petroleum products in bulk as a carrier. H. F. Johnson, Inc. v. Board of Railroad Commrs., 128 M 76, 270 P 2d 990.

References

Board of Railroad Commrs. v. Gamble-Robinson Co., 111 M 441, 444, 111 P 2d 306.

Collateral References

Automobiles⇦83.

43 Am. Jur. 715, Public Utilities and Services, § 216 et seq.

8-111.1. Time for hearing and issuance of finding, order or decision. All applications for certificates of public convenience and necessity as class A, class B, or class C carriers filed by motor carriers before the board of railroad commissioners must be set for hearing at a date and time

certain, which said date of hearing must be not more than sixty (60) days after the date of filing of said application before said board, and the board must issue its finding, order or decision on said application and the evidence presented in support thereof at the time of said hearing within ninety (90) days from and after the said date of the filing of said application.

History: En. Sec. 1, Ch. 102, L. 1955.

8-112. (3847.12) **Authorization of board required for transfer of privilege—partial or conditional granting of privilege—duration of certificate.** Any right, privilege or certificate held, owned, or obtained by any motor carrier may be sold, assigned, leased, transferred and inherited as other property only by the authorization of the board. The board may issue the certificate, as prayed for, or issue it for the partial exercise only of the privilege sought; and may attach to the exercise of the rights granted by such certificate such terms and conditions as in its judgment the public convenience and necessity may require. When a certificate has once been issued to a motor carrier, as in this act provided, such certificate shall continue in force until terminated by the board for cause, as herein provided, or until terminated by the owner's failure to comply with section 8-113.

History: En. Sec. 12, Ch. 184, L. 1931.

8-113. (3847.13) **Compliance with rules and regulations of board required of certificate holder.** No certificate shall be issued or remain in force unless the holder thereof shall comply with such rules and regulations of the board as it shall adopt governing the filing of bonds, policies of insurance, or such security or agreement in such form and adequate amount and conditioned as the board may require for: (a) the prompt payment of all compensation or fees due the state under the provisions of this act, and (b) the payment of any final judgment which may be rendered against any such motor carrier arising out of the death of or injury to any passenger or injury to other persons or property as a result of any negligent operation of the motor vehicles or such motor carrier, with power in the board to permit self-insurance whenever, in its opinion, the financial ability of the motor carrier warrants.

History: En. Sec. 13, Ch. 184, L. 1931.

8-114. (3847.14) **Manner of procedure—enforcement of orders of board.** In so far as possible and applicable, the provisions of statutes prescribing the procedure before the board in cases involving rates, facilities, service or other affairs of railroads in this state, including forms of applications, complaints, answers, orders, and notices of hearing, the conducting of hearings, compelling the attendance and testimony of witnesses and the production of records, data and information, the preparation, recording and serving of reports and orders of the board, shall be followed and shall govern in all proceedings and investigations before the board in cases arising in connection with the performance by the board of its duties or the exercise of its jurisdiction under the provisions of this act. Orders and final determinations of the board in all proceedings pursuant to the provisions

of this act shall be enforced in the manner provided for the enforcement of orders of the board of railroad commissioners by the provisions of chapter 1 of Title 72 of this code, and laws amendatory thereof. Provided, further, that if any motor carrier shall operate in violation of the provisions of this act, or shall fail or neglect to obey any lawful order of the board, the board or any party injured may apply to any court of competent jurisdiction, in any county where such motor carrier is engaged in business, for the enforcement of this act or such order; and the court shall enforce obedience thereto by writ of injunction, or other proper process, mandatory, or otherwise, and to restrain such carrier, its officers, agents, employees, or representatives from further violation of this act, or such order, or to enjoin upon it, or them, obedience to the same.

History: En. Sec. 14, Ch. 184, L. 1931.

Compiler's Note

Sections 72-106, 72-108 to 72-110 and 72-144, contained in the reference in this section to chapter 1 of Title 72 have been repealed; section 72-106 was repealed by Sec. 1, Ch. 129, Laws 1963 and Sec. 3, Ch. 212, Laws 1963; sections 72-108 to 72-110 were repealed by Sec. 1, Ch. 129, Laws 1963 and section 72-144 was repealed by Sec. 101, Ch. 199, Laws 1965.

Change of Venue

Though, generally speaking, all equitable suits (injunction, inter alia) are property triable, under section 93-2904, in the county in which defendants, or any of them, reside, this section specifically provides that a party injured by the illegal operation of a motor vehicle for hire may by writ of injunction seek enforcement of the act in any county in which the motor carrier is engaged in business; hence, where injunctive relief was sought against such a carrier in a county between the county seat of which and that of his home county defendant was doing business, the court erred in granting a change of venue to the latter county. Great Northern Ry. Co. v. Hatch, 98 M 269, 277, 38 P 2d 976.

Enjoining Use of Highways

This section must be construed with section 72-128, and, the former being a later enactment modifies the latter so that the board of railroad commissioners could maintain action to enjoin motor carrier from operating motor vehicles over state highways until motor carrier complied with provisions of Motor Carrier Act. Board of Railroad Commrs. v. Aero Mayflower Transit Co., 119 M 118, 172 P 2d 452, 455, affirmed in 332 U S 495, 92 L Ed 99, 68 S Ct 167.

Collateral References

Automobiles⇐83, 107 (2).
60 C.J.S. Motor Vehicles §§ 133, 134.

8-115. (3847.15) **Provisions for review of orders of board.** The provisions of chapter 1 of Title 72 of this code, and laws amendatory thereof, shall be applicable and shall govern in all proper cases for the review by the district or supreme court of orders and final determinations of the board in proceedings involving the rates, services, facilities, or other affairs of motor carriers in this state.

History: En. Sec. 15, Ch. 184, L. 1931.

Compiler's Note

Repeal of sections included in reference in this section to chapter 1 of Title 72, see Compiler's Note under sec. 8-114.

Collateral References

43 Am. Jur. 720, Public Utilities and Services, § 224 et seq.

8-116. (3847.16) **Annual fee for motor carriers—fee for seasonal operators—compliance required of motor carriers operating in more than one state—revocation of certificate for failure to pay fees—lien of fees and charges.** (a) In addition to all of the licenses, fees or taxes imposed upon motor vehicles in this state, and in consideration of the use of the public highways of this state, every motor carrier, as defined in this act,

shall, at the time of the issuance of a certificate and annually thereafter, on or between the first day of July and the fifteenth day of July, of each calendar year, pay to the board of railroad commissioners of the state of Montana the sum of ten dollars ($10.00), for every motor vehicle operated by the carrier over or upon the public highways of this state.

Provided, that a motor carrier engaged in seasonal operations only, where its said operations do not extend continuously over a period of not to exceed six (6) months in any calendar year, shall only be required to pay compensation and fees in a sum equal to one-half (½) of the compensation and fees herein provided, and, provided further, that the compensation and fees herein imposed shall not apply to motor vehicles maintained and used by a motor carrier as standby or emergency equipment. The board shall have the power and it is hereby made its duty to determine what motor vehicles shall be classed as standby or emergency equipment.

(b) When transportation service is rendered partly in this state and partly in an adjoining state or foreign country, motor carriers shall comply with the provisions of this act relating to the payment of compensation and to the making of annual or special reports or statements herein required, and shall show the total business performed within the limits of this state and such other information concerning its operation within this state as may be required by the board as fully and completely and in the same manner as herein required of motor carriers operating wholly within this state.

(c) Upon the failure of any motor carrier to pay such compensation, when due, the board may in its discretion revoke the carrier's certificate or privilege and no carrier whose certificate or privilege is so revoked shall again be authorized to conduct such business until such compensation shall be paid.

(d) All compensation, fees, or charges, imposed and accruing under the provisions of this act, shall be a lien upon all property of the motor carrier used in its operations under this act; said lien shall attach at the time the compensation, fees, or charges become due and payable, and shall have the effect of an execution duly levied on such property of the motor carrier and shall so remain until said compensation, fees, or charges are paid or the property sold for the payment thereof.

History: En. Sec. 16, Ch. 184, L. 1931.

Constitutionality

The provisions of the Motor Carrier Act are not invalid for failure to specify any method by which gross operating revenue of carrier in state could be determinated, nor for failure to make distinction between large and small vehicles or heavy or light loads or number of miles traveled over state highways. Board of Railroad Commrs. v. Aero Mayflower Transit Co., 119 M 118, 172 P 2d 452, 455, affirmed in 332 U S 495, 92 L Ed 99, 68 S Ct 167.

Exaction of taxes from interstate motor carrier held not invalid as burdening interstate commerce or as violating the equal protection clause of state and federal constitutions. Board of Railroad Commrs. v. Aero Mayflower Transit Co., 119 M 118, 172 P 2d 452, 455, affirmed in 332 U S 495, 92 L Ed 99, 68 S Ct 167.

In determining the constitutionality of the fees levied on interstate carriers it is of no consequence that the state has seen fit to levy two exactions, under this section and section 8-127, rather than to combine them into one. Aero Mayflower Transit Co. v. Board of Railroad Commrs., 332 U S 495, 92 L Ed 99, 68 S Ct 167, affirming 119 M 118, 172 P 2d 452.

The tax imposed on carriers by this section and also by section 8-127 does not violate the commerce clause of the United States constitution. Aero Mayflower Transit Co. v. Board of Railroad Commrs., 332

U S 495, 92 L Ed 99, 68 S Ct 167, affirming 119 M 118, 172 P 2d 452.

Application of Act

The Motor Carrier Act was intended to apply to all intrastate and interstate motor carriers operating over state highways. Board of Railroad Commrs. v. Aero Mayflower Transit Co., 119 M 118, 172 P 2d 452, 455, affirmed in 332 U S 495, 92 L Ed 99, 68 S Ct 167.

Legislative Intent

The provision of section 8-127 imposing upon interstate motor carrier a tax of one-half of one per cent based on carrier's "gross operating revenue," and provision of this section requiring interstate motor carriers to make reports showing total business performed within limits of state, must be read together to ascertain legislative intent. Board of Railroad Commrs. v. Aero Mayflower Transit Co., 119 M 118, 172 P 2d 452, 455, affirmed in 332 U S 495, 92 L Ed 99, 68 S Ct 167.

References

State ex rel. Board of Railroad Commrs. v. District Court, Second Judicial District, Silver Bow County, 119 M 425, 175 P 2d 173, 174.

Collateral References

Automobiles⇔97-100.

60 C.J.S. Motor Vehicles §§ 136-141.

37 Am. Jur. 563, Motor Transportation, § 74 et seq.

8-117. (3847.17) **Motor carrier fund — composition — use.** All of the fees and compensation charges collected by the board under the provisions of this act shall be transmitted to the state treasurer who shall place the same to the credit of a special fund designated as "motor carrier fund"; such fund shall be available for the purpose of defraying the expenses of administration of this act and the regulation of the businesses herein described, and shall be accumulative from year to year. All expenses of whatsoever kind or nature of the board incurred in carrying out the provisions of this act shall be audited by the state board of examiners and paid out of the "motor carrier fund." Such fund shall not come within the restriction of any law of this state governing payment of expense incurred in a previous year, it being intended that such fund shall be applied to the payment of any necessary costs or expenses in carrying out the provisions of this act, whether incurred during the ensuing year or previous fiscal years, and such "motor carrier fund" or accumulations thereof, are hereby appropriated for the payment of the costs and expenses rendered necessary in the carrying out of the provisions of this act.

History: En. Sec. 17, Ch. 184, L. 1931.

NOTE.—This section was probably repealed by implication by Sec. 2, Ch. 14, Laws 1941, section 84-1902.

References

Board of Railroad Commrs. v. Aero Mayflower Transit Co., 119 M 118, 172 P 2d 452, 455.

8-118. (3847.18) **Records of motor carriers to be open for inspection by board—system of accounts to be prescribed—reports required.** All records, books, accounts and files of every class A and class B motor carrier in this state, so far as the same shall relate to the business of transportation conducted by such motor carrier, shall at all times be subject to examination by the board or by any authorized agent or employee of the board. The board shall prescribe a uniform system of accounts and uniform reports covering the operations of such class A and class B motor carriers and every motor carrier authorized to operate as such in accordance with the provisions of this act shall keep its records, books, and accounts according to such uniform system, in so far as possible. On or before the fifteenth day of July of each year, every motor carrier authorized to engage in such business shall file with the board a report, under oath. In

addition to such annual reports every motor carrier shall prepare and file with the board, at the time or times and in the form to be prescribed by the board, annual reports, special reports and statements giving to the board such information as it shall require in order to perform its duties under this act.

History: En. Sec. 18, Ch. 184, L. 1931.

Collateral References
Automobiles⇐122.
60 C.J.S. Motor Vehicles § 44.

8-119. (3847.19) **Penalties for violations.** Any motor carrier, subject to the provisions of this act, or, whenever any such motor carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or persons acting for or employed by such corporation, or any person, corporation, association, or partnership, or officer, agent or employee thereof, or any broker of property or officer, agent or employee thereof, who violates or fails to comply with or who procures, aids or abets in the violation of any provision of this act, or who fails to obey, observe, or comply with any lawful order, decision, rule or regulation, direction, demand, or requirement of the board, or any part of provisions thereof, shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars ($25) nor more than five hundred dollars ($500), or by imprisonment in the county jail for a period of not more than thirty (30) days, or by both such fine and imprisonment.

History: En. Sec. 19, Ch. 184, L. 1931; amd. Sec. 2, Ch. 204, L. 1963; amd. Sec. 1, Ch. 209, L. 1967.

8-120. (3847.20) **Continuation of business by motor carriers already licensed.** All motor carriers legally licensed by the board of railroad commissioners, under the provisions of chapter 154, laws eighteenth legislative assembly, 1923, as amended by chapter 103, laws nineteenth legislative assembly, 1925, and chapter 141, laws twenty-first legislative assembly, 1929, and engaged in business at the time of the effective date of this act, shall be entitled to receive from the board, without further application, a certificate as provided in this act authorizing the continuance of their businesses.

History: En. Sec. 20, Ch. 184, L. 1931.

NOTE.—The laws referred to in this section were repealed by chapter 184, Laws 1931.

Collateral References
Automobiles⇐78.
60 C.J.S. Motor Vehicles § 85.

8-121. (3847.21) **Acts which prima facie deem person to be motor carrier.** Any person, firm or corporation maintaining a public motor vehicle stand, or by sign, symbol, or device or vehicle or clothing, or by advertisement holds forth transportation for compensation, or solicits the transportation of persons or property for compensation among the public, or solicits for trips for compensation, or provides transportation service to the public under the guise of leasing or buy-and-sell arrangements, shall be deemed, prima facie, a "motor carrier" subject to this act, and the burden of proof shall be on such person, firm or corporation to disprove such status.

History: En. Sec. 21, Ch. 184, L. 1931; amd. Sec. 3, Ch. 204, L. 1963.

Transportation of Merchandise by Mercantile Establishments

Where several city mercantile establishments entered into a contract of purchase of a truck agreeing to pay the seller $1,000, payable $100 down and $75 per month for twelve months, the truck to be used for transporting merchandise bought or sold, the purchasers assuming the expense of upkeep and operation as a certain ratio as between themselves based on the weight of merchandise carried for each per mile, the seller being employed as transportation manager at $6 per day, he to receive a bonus for good service, neither the purchasers nor the seller, their employee, were carriers for hire, and, therefore, under this section, were not required to secure a certificate of public convenience and necessity from the board of railroad commissioners to entitle them to the use of state highways in the transportation of such merchandise. Christie Storage & Transfer Co. v. Hatch, 95 M 601, 603, 28 P 2d 470, distinguished in 102 M 382, 384, 58 P 2d 271.

Collateral References

Automobiles⇐76.
60 C.J.S. Motor Vehicles § 46.

8-122. (3847.22) **Private carriers not converted into common carriers.** Nothing in this act shall be construed as converting or attempting to convert a private carrier into a common carrier, and it is hereby declared that this act is intended primarily as a regulation of the public highways of the state of Montana.

History: En. Sec. 22, Ch. 184, L. 1931.

8-123. (3847.23) **Application of act to interstate carriers and motor carriers operating in national parks.** The terms and provisions of this act shall apply to commerce with foreign nations, and to commerce among the several states of this Union, in so far as such application may be permitted under the provisions of the constitution of the United States, treaties made thereunder and the acts of Congress; provided that it shall not be necessary for an interstate or international motor carrier, in order to obtain a permit as herein provided, to make any showing of public convenience and necessity, except as to the transportation of passengers and/or freight between points within this state, the power to regulate such operation being specifically reserved herein; and provided further, the board is hereby authorized to exercise any additional power that may from time to time be conferred upon the state by any act of Congress, and provided further, that any motor carrier operating in and about any national park, whose rates and methods of accounting are controlled by contract with the United States, shall not be subject to any regulation by the commission in conflict with such contract or in conflict with any regulation by the United States made pursuant to such contract or made pursuant to an act of Congress of the United States.

History: En. Sec. 23, Ch. 184, L. 1931.

Collateral References

Automobiles⇐78.
60 C.J.S. Motor Vehicles §§ 46, 94.

8-124. (3847.24) **Invalidity of part of act not to affect remainder.** If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislative assembly declares that it would have passed this act and each section, subsection, sentence, clause

and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

History: En. Sec. 24, Ch. 184, L. 1931.

8-125. (3847.25) **Repealing clause.** This act shall not repeal any of the existing law or laws relating to motor-propelled vehicles and owners and operators, or requiring compliance with any condition for their operations except chapter 154, laws eighteenth legislative assembly, 1923, chapter 103, laws nineteenth legislative assembly, 1925, and chapter 141, laws twenty-first legislative assembly, 1929.

History: En. Sec. 25, Ch. 184, L. 1931.

8-126. (3847.26) **Fees required for filing various documents.** The board of railroad commissioners and the public service commission of Montana shall, except as otherwise provided by law, require and receive fees before filing any annual reports, tariffs, schedules and supplements thereof and shall require and receive fees for all copies of orders, documents, classifications, blank forms and other instruments prepared by it or on file in the office thereof, except as otherwise provided by law to be furnished free of charge, in accordance with the following schedule:

Filing annual reports, each	$5.00
Filing tariffs, time schedules and supplements thereto, each	2.00
For issuing certificates of public convenience and necessity to motor carriers, each	2.00
Classification for public utilities, each	1.50
Classification for motor carriers, each	.50
For copy of rules and regulations for motor carriers, each	.25
Blank forms of annual reports for utilities and common carriers	Cost

Nothing herein contained shall be construed to require or authorize the board of railroad comissioners or the public service commission to collect fees for the filing of any annual reports, tariffs, schedules and supplements thereof which relate solely to interstate commerce.

History: En. Sec. 1, Ch. 100, L. 1935; amd. Sec. 1, Ch. 73, L. 1947.

Collateral References
Automobiles⇐98.
60 C.J.S. Motor Vehicles § 137.

8-127. (3847.27) **Additional fees covering motor carriers.** In addition to all other licenses, fees and taxes imposed upon motor vehicles in this state and in consideration of the use of the highways of this state, every motor carrier holding a certificate of public convenience and necessity or permit issued by the board of railroad commissioners, shall between the first and fifteenth days of January, April, July and October of each year, file with the board of railroad commissioners a statement showing the gross operating revenue of such carrier for the preceding three (3) months of operation, or portion thereof, and shall pay to the board a fee of one-half (½) of one (1) per cent of the amount of such gross operating revenue; and in the event that such carrier operates in interstate commerce, the gross operating revenue of such carrier within this state shall be deemed to be all the revenue received from business beginning and ending within this state, and a proportion based upon the proportion of

the mileage within this state to the entire mileage over which the business is done of revenue on all business passing through, into or out of this state; provided, however, that the minimum fee which shall be paid by each class A and class B carrier for each vehicle registered and/or operated under the provisions of the Motor Carrier Act shall be thirty dollars ($30.00) and the minimum annual fee which shall be paid by each class C carrier for each vehicle registered and/or operated under the Motor Carrier Act shall be fifteen dollars ($15.00); provided, however, that the minimum annual fee provided by this section shall not apply to either new or used vehicles operated under their own power where such vehicle is being delivered to a dealer and will only be transported once.

History: En. Sec. 2, Ch. 100, L. 1935; amd. Sec. 2, Ch. 73, L. 1947; amd. Sec. 1, Ch. 162, L. 1951.

Constitutionality

Exaction of taxes from interstate motor carrier held not invalid as burdening interstate commerce or as violating the equal protection clause of state and federal constitutions. Board of Railroad Commrs. v. Aero Mayflower Transit Co., 119 M 118, 172 P 2d 452, 455, affirmed in 332 U S 495, 92 L Ed 99, 68 S Ct 167.

The provisions of the Motor Carrier Act are not invalid for failure to specify any method by which gross operating revenue of carrier in state could be determined, nor for failure to make distinction between large and small vehicles or heavy or light loads or number of miles traveled over state highways. Board of Railroad Commrs. v. Aero Mayflower Transit Co., 119 M 118, 172 P 2d 452, 455, affirmed in 332 U S 495, 92 L Ed 99, 68 S Ct 167.

The flat minimum of $15 fixed by this section (being the only part of this section before the United States supreme court for decision) did not violate the commerce clause of the United States constitution. Aero Mayflower Transit Co. v. Board of Railroad Commrs., 332 U S 495, 92 L Ed 99, 68 S Ct 167, affirming 119 M 118, 172 P 2d 452.

In determining the constitutionality of the fees levied on interstate carriers it is of no consequence that the state has seen fit to levy two exactions, under this section and section 8-116, rather than to combine them into one. Aero Mayflower Transit Co. v. Board of Railroad Commrs., 332 U S 495, 92 L Ed 99, 68 S Ct 167, affirming 119 M 118, 172 P 2d 452.

Legislative Intent

The provision of this section imposing upon interstate motor carrier a tax of one-half of one per cent based on carrier's "gross operating revenue," and provision of section 8-116 requiring interstate motor carriers to make reports showing total business performed within limits of state must be read together to ascertain legislative intent. Board of Railroad Commrs. v. Aero Mayflower Transit Co., 119 M 118, 172 P 2d 452, 455, affirmed in 332 U S 495, 92 L Ed 99, 68 S Ct 167.

References

State ex rel. Board of Railroad Commrs. v. District Court, Second Judicial District, Silver Bow County, 119 M 425, 175 P 2d 173, 174.

8-128. (3847.28) **Disposition made of fees.** All fees collected from motor carriers shall be, by the commission, paid into the state treasury and shall be, by the state treasurer, placed to the credit of the motor carrier fund. All other fees and charges collected by the commission under the provisions of this act shall be by the commission paid into the state treasury and shall be by the state treasurer placed to the credit of a fund to be known as the "public service commission fund," and the general and contingent expenses of the public service commission shall be by the state treasurer paid out of said public service commission fund upon presentation of duly verified claims therefor, which claims shall have been approved by the commission and audited by the state board of examiners.

History: En. Sec. 3, Ch. 100, L. 1935.

NOTE.—This section was probably repealed by implication by Sec. 2, Ch. 14, Laws 1941, section 84-1902.

Collateral References

Automobiles⇐101.

60 C.J.S. Motor Vehicles §§ 143, 144.

8-129. Board may compel carrier bus lines to furnish service. The board of railroad commissioners, after ten days notice and public hearing, shall have the power to compel all motor carrier bus lines under its jurisdiction to furnish, provide and maintain such service, instrumentalities, equipment, facilities and time schedules as shall promote the safety, health, comfort and conveniences of its passengers, employees and the public, and as shall in all respects be adequate, efficient, just and reasonable.

History: En. Sec. 2, Ch. 143, L. 1943.

8-130. (3847.29) **Board may grant temporary certificates, when.** During the present world war the board of railroad commissioners of the state of Montana shall be authorized to grant, without notice of hearing, applications of motor carriers for temporary certificates of public convenience and necessity for a period to be fixed by the board not to exceed thirty (30) days, when, in the judgment of the board, an emergency exists and public convenience and necessity requires it, and to issue such certificates for such period; provided, however, that at any time prior to the expiration of such period, the board shall have the power to cancel any such certificate after five (5) days' notice to the motor carrier holding the same, when, in the judgment of the board, an emergency no longer exists and public convenience and necessity no longer requires it; provided further, that transportation service rendered under such temporary authority shall be subject to all applicable provisions of the Motor Carrier Act, this chapter, and to the rules, and regulations and requirements of the board thereunder, except that the fee for such application shall be five dollars ($5.00) and the minimum annual gross operating revenue fee, as fixed by section 8-127 need not be paid.

History: En. Sec. 2, Ch. 133, L. 1943.

CHAPTER 2

PIPELINE CARRIERS OF OIL—REGULATION

Section 8-201. Common carriers defined.
8-202. Pipelines public utilities—jurisdiction.
8-203. Regulation of construction of pipelines—eminent domain.
8-204. Establishment of rates—hearing—complaints.
8-205. Railroad commissioners may require connections—facilities—rules.
8-206. Tariffs and reports—board's authority to hear complaints—witnesses—enforcement of orders by board.
8-207. Discrimination prohibited—establishment of rates.
8-208. Repealed.
8-209. Penalty for violation of act—recovery of damages.
8-210. Duty to transport without discrimination.
8-211. Effect of partial invalidity of act.

8-201. (3848) **Common carriers defined.** Every person, firm, corporation, limited partnership, joint-stock association or association of any kind whatever:

(a) Owning, operating, or managing any pipeline or any part of any pipeline within the state of Montana, for the transportation of crude petroleum, coal, or the products thereof to or for the public for hire, or

engaged in the business of transporting crude petroleum, coal, or the products thereof by pipelines; or

(b) Owning, operating, or managing any pipeline or any part of any pipeline for the transportation of crude petroleum, coal, or the products thereof, to or for the public for hire, and which said pipeline is constructed or maintained upon, along, over, or under any public road or highway; or

(c) Owning, operating, or managing any pipeline or any part of any pipeline or pipelines for transportation to or for the public for hire, of crude petroleum, coal, or the products thereof, and which said pipeline or pipelines is or may be constructed, operated, or maintained across, upon, along, over, or under the right of way of any railroad, corporation, or other common carrier required by law to transport crude petroleum, coal, or the products thereof as a common carrier; or

(d) Owning, operating, or managing, or participating in ownership, operation, or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipeline or pipelines, or any part of any pipeline, for the transportation from any oil field, coal mine or field, or place of production within the state of Montana to any distributing, refining, or marketing center or reshipping point thereof, within this state, of crude petroleum, coal, or the products thereof, bought of others; or

(e) Made a common carrier by or under the terms of contract with or in pursuance of the law of the United States, is hereby declared to be a common carrier and subject to the provisions hereof, but the provisions of this act shall not apply to those pipelines which are limited in their use to the wells, stations, plants and refineries of the owner and which are not a part of the pipeline transportation system of any common carrier as herein defined; nor shall such provisions apply to any property of such a common carrier which is not a part of or necessarily incident to its pipeline transportation system.

History: En. Sec. 1, Ch. 8, Ex. L. 1921; re-en. Sec. 3848, R. C. M. 1921; amd. Sec. 1, Ch. 190, L. 1955; amd. Sec. 1, Ch. 170, L. 1963.

Collateral References

Carriers⇐5, 10.
13 C.J.S. Carriers §§ 11, 19.
13 Am. Jur. 2d 574, Carriers, § 19.

Cross-Reference

Breaking or obstructing pipelines, penalty, sec. 94-3326.

8-202. (3849) **Pipelines public utilities—jurisdiction.** It is declared that the operation of these pipelines, to which this act applies, for the transportation of crude petroleum, coal, or the products thereof, in connection with the purchase or purchase and sale of such crude petroleum, coal, or the products thereof, is a business in mode of the conduct of which the public is interested, and as such is subject to regulation by law; and accordingly it is provided that from and after the expiration of thirty (30) days from the time this law takes effect the business of purchasing, or of purchasing and selling crude petroleum, coal, or the products thereof, using in connection with such business a pipeline of the class subject to this act to transport the crude petroleum, coal, or the products thereof so

bought or sold shall not be conducted, unless such pipeline so used in connection with such business be a common carrier within the purview of this law and subject to the jurisdiction herein conferred upon the board of railroad commissioners of Montana. It shall be the duty of the attorney general to enforce this provision by injunction or other adequate remedy.

History: En. Sec. 2, Ch. 8, Ex. L. 1921; re-en. Sec. 3849, R. C. M. 1921; amd. Sec. 2, Ch. 190, L. 1955; amd. Sec. 2, Ch. 170, L. 1963.

References

State ex rel. Continental Supply Co. v. Tullock, 68 M 268, 277, 217 P 348.

Collateral References

Carriers⇐5.
13 C.J.S. Carriers § 19.

8-203. (3850) **Regulation of construction of pipelines—eminent domain.** The right to lay, maintain, and operate pipelines, together with telegraph and telephone lines incidental to and designed for use only in connection with the operation of such lines along, across, or under any public stream or highway in this state, is hereby conferred upon all persons, firms, limited partnerships, joint-stock associations, or corporations coming within any of the definitions of common carrier pipelines as hereinbefore made. Any person, firm, limited partnership, joint-stock association, or corporation may acquire the right to construct pipelines and such incidental telephone and telegraph lines along, across, or over any public road or highway in this state, by filing with the board of railroad commissioners of Montana an acceptance of the provisions of this law, expressly agreeing in writing that in consideration of the right so acquired it shall be and become a common carrier pipeline, subject to the duties and obligations conferred or imposed in this act. This right to run along, across or over any public road or highway, as before provided for, can only be exercised upon condition that the traffic thereon be not interfered with, and that such road or highway be promptly restored to its former condition of usefulness, and the restoration thereof be subject also to the supervision of the county commissioners of the county in which said highway is situated. And, provided that in the exercise of the privileges herein conferred, such pipelines shall compensate the county for any damage done to such public road, in the laying of pipelines, telegraph or telephone lines, along or across the same; and nothing herein shall be construed to grant any pipeline company the right to use any public street or alley in any incorporated city or town, except by express permission from the city or governing authority thereof.

Every person, firm, corporation, limited partnership, joint-stock association, or association of any kind mentioned in this act, which shall have filed with the board of railroad commissioners of Montana its acceptance of the provisions of this act, is hereby granted the right and power of eminent domain in the exercise of which he, it, or they may enter upon and condemn the land, rights of way, easements, and property of any person or corporation necessary for the construction, maintenance or authorization of his, its, or their common carrier pipeline, the manner and method of such condemnation and the assessment and payment of the damages therefor to be the same as is provided by law in the case of railroads.

History: En. Sec. 3, Ch. 8, Ex. L. 1921; re-en. Sec. 3850, R. C. M. 1921.

References

State ex rel. Continental Supply Co. v. Tullock, 68 M 268, 277, 217 P 348.

Collateral References

Mines and Minerals⇨88.
58 C.J.S. Mines and Minerals § 240.

8-204. (3851) **Establishment of rates — hearing — complaints.** The board of railroad commissioners of Montana shall have the power to establish and enforce rates of charges and regulations for gathering, transporting, loading, and delivering crude petroleum, coal, or the products thereof by such common carrier in this state, and for the use of storage facilities necessarily incident to such transportation and to prescribe and enforce rules and regulations for the government and control of such common carriers in respect to their pipelines and receiving, transferring and loading facilities, and it shall be its duty to exercise such power upon petition by any person showing a substantial interest in the subject. No order establishing or prescribing rates, rules, and regulations shall be made except after hearing and at least ten (10) days' and not more than thirty (30) days' notice to the person, firm, corporation, partnership, joint-stock association, or association owning or controlling and operating the pipeline or pipelines affected. In the event any rate shall be filed by any pipeline and complaint against same or petition to reduce same shall be filed by any shipper, and such complaint be sustained, in whole or in part, all shippers who shall have paid the rates so filed by the pipeline shall have the right to reparation or reimbursement of all excess in transportation charges so paid over and above the proper rate as finally determined on all shipments made after the date of the filing of such complaint.

History: En. Sec. 4, Ch. 8, Ex. L. 1921; re-en. Sec. 3851, R. C. M. 1921; amd. Sec. 3, Ch. 190, L. 1955; amd. Sec. 3, Ch. 170, L. 1963.

References

State ex rel. Continental Supply Co. v. Tullock, 68 M 268, 277, 217 P 348.

Collateral References

Carriers⇨26-31.
13 C.J.S. Carriers § 278.
43 Am. Jur. 715, Public Utilities and Services, § 216 et seq.

8-205. (3852) **Railroad commissioners may require connections—facilities—rules.** Every common carrier as above defined shall exchange crude petroleum tonnage, coal tonnage, or petroleum or coal products tonnage with each like common carrier, and the board of railroad commissioners of Montana shall have the power to require such connections and facilities for the interchange of such tonnage to be made at every locality reached by both pipelines whenever a necessity therefor exists and subject to such rates and regulations as may be made by the board of railroad commissioners of Montana; and any such common carrier under like rules and regulations shall be required to install and maintain facilities for the receipt and delivery of crude petroleum, coal, or the products thereof of patrons at all points on such pipeline. No carrier shall be required to receive or transport any crude petroleum, coal, or the products thereof except such as may be marketable under rules and regulations to be prescribed by the board of railroad commissioners of Montana which they are hereby empowered and required to prescribe. The board of rail-

road commissioners of Montana is also empowered and required to make rules for the ascertainment of the amount of water and other foreign matter in crude oil, coal, or the products thereof tendered for transportation, and for deduction therefor and for the amount of deduction to be made for temperature, leakage and evaporation. It is provided, however, that the recital herein of particular powers on the part of said board of railroad commissioners of Montana shall not be construed to limit the general powers conferred by this act. Until set aside or vacated by some decree or order of a court of competent jurisdiction, all orders of the board of railroad commissioners of Montana as to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity.

History: En. Sec. 5, Ch. 8, Ex. L. 1921; re-en. Sec. 3852, R. C. M. 1921; amd. Sec. 4, Ch. 190, L. 1955; amd. Sec. 4, Ch. 170, L. 1963.

Collateral References
Carriers⇐170.
13 C.J.S. Carriers § 450.

8-206. (3853) **Tariffs and reports—board's authority to hear complaints—witnesses—enforcement of orders by board.** Such common carriers of crude petroleum, coal, or the products thereof shall make and publish their tariffs under such rules and regulations as may be prescribed by said board of railroad commissioners of Montana, the board of railroad commissioners of Montana shall require them to make reports and may investigate their books and records kept in connection with such business. The board of railroad commissioners of Montana shall require of such common carrier pipelines monthly reports, duly verified under oath, of the total quantities of crude petroleum, coal, or the products thereof owned by such pipelines and of that held by them in storage for others, as also of their unfilled storage capacity, provided no publicity shall be given by the board of railroad commissioners of Montana to the reports as to stock of crude petroleum, coal, or the products thereof on hand of any particular pipeline; but the board of railroad commissioners of Montana in its discretion may make public the aggregate amounts held by all the pipelines making such reports, and of their aggregate storage capacity. The board of railroad commissioners of Montana shall have the power and authority to hear and determine complaints, to require attendance of witnesses, and to institute suits and sue out such writs and process as may be necessary for the enforcement of its orders.

History: En. Sec. 6, Ch. 8, Ex. L. 1921; re-en. Sec. 3853, R. C. M. 1921; amd. Sec. 5, Ch. 190, L. 1955; amd. Sec. 5, Ch. 170, L. 1963.

Collateral References
Carriers⇐9.
13 C.J.S. Carriers § 302.

8-207. (3854) **Discrimination prohibited—establishment of rates.** No such common carrier in its operations as such shall discriminate between or against shippers in regard to facilities furnished or service rendered or rates charged under same or similar circumstances in the transportation of crude petroleum, coal, or the products thereof; nor shall there be any discrimination in the transportation of crude petroleum, coal, or the products thereof produced or purchased by itself directly or indirectly. In this connection the pipeline shall be considered as a shipper of the crude petroleum, coal, or the products thereof produced or purchased by itself

directly or indirectly and handled through its facilities. No such carrier in such operation shall directly or indirectly charge, demand, collect, or receive from any one a greater or less compensation for any service rendered than from another for a like and contemporaneous service; provided, this shall not limit the right of the board of railroad commissioners of Montana to prescribe rates and regulations different from or to some places from other rates or regulations for transportation from or to other places, as it may determine; nor shall any carrier be guilty of discrimination when obeying any order of the board of railroad commissioners of Montana. When there shall be offered for transportation more crude petroleum, coal, or the products thereof than can be immediately transported, the same shall be equitably apportioned. The board of railroad commissioners of Montana may make and enforce general or specific regulations in this regard. No such common carrier shall at any time be required to receive for shipments from any person, firm, corporation, or association of persons, exceeding three thousand (3,000) barrels of petroleum or the products thereof in any one day.

History: En. Sec. 7, Ch. 8, Ex. L. 1921; re-en. Sec. 3854, R. C. M. 1921; amd. Sec. 6, Ch. 190, L. 1955; amd. Sec. 6, Ch. 170, L. 1963.

Collateral References

Carriers⇐32.
13 C.J.S. Carriers § 365.

8-208. (3855) **Repealed—Chapter 238, Laws of 1953.**

Repeal

This section (Sec. 8, Ch. 8, Ex. L. 1921), relating to the power of the board of railroad commissioners of Montana to make and enforce rules and regulations for the prevention of actual waste of oil, was repealed by Sec. 24, Ch. 238, Laws 1953. For present law, see secs. 60-124 to 60-145.

Section 14 of Ch. 238, Laws 1953 (60-137) keeps in effect all rules and regulations of the board of railroad commissioners pertaining to matters embraced in the new act and not in conflict therewith. Section 15 of Ch. 238, Laws 1953 (60-138) substitutes the oil and gas conservation commission for the board of railroad commissioners in all contracts, etc. pertaining to matters embraced in the new act.

8-209. (3856) **Penalty for violation of act—recovery of damages.** Any common carrier as herein defined who shall violate any provisions of this act or who shall fail to perform any duty herein imposed or any valid order of the board of railroad commissioners of Montana, when not stayed or suspended by order of court, shall be subject to a penalty of not less than one hundred dollars nor more than one thousand dollars for each offense, such penalty to be recoverable at suit of the attorney general of the state of Montana in the name of the state and for its use. Actual damages may also be recovered by and for the use of any person, corporation or association of persons against whom there shall have been an unlawful discrimination as herein defined; such suit to be brought in the name of and for the use of party aggrieved, and may be maintained in any court of proper jurisdiction having due regard to the ordinary statutes of venue. For the willful violation of any of the provisions herein forbidding discrimination on the part of common carriers, it is hereby provided that the owners, officers, agents, or employees of such carriers who may be guilty thereof shall be deemed guilty of a misdemeanor; each violation of any of such provisions shall be deemed a separate and distinct offense and upon conviction thereof the party violating same shall be fined in a sum of not

less than fifty dollars nor more than one thousand dollars, and may be further punished by confinement in the county jail for not less than ten days nor more than six months.

History: En. Sec. 9, Ch. 8, Ex. L. 1921; re-en. Sec. 3856, R. C. M. 1921.

Collateral References

Carriers⇐20 (1), (8), 21 (2).
13 C.J.S. Carriers §§ 454, 457, 469, 475-477, 478, 492, 503, 504, 505, 506, 589.

8-210. (3857) **Duty to transport without discrimination.** Subject to the provisions of this act and the rules and regulations which may be prescribed by the board of railroad commissioners of Montana, every such common carrier shall receive and transport crude petroleum, or coal, delivered to it for transportation and shall so receive and transport same and perform its other duties with respect thereto without discrimination.

History: En. Sec. 10, Ch. 8, Ex. L. 1921; re-en. Sec. 3857, R. C. M. 1921; amd. Sec. 7, Ch. 170, L. 1963.

Collateral References

Carriers⇐13 (1).
13 C.J.S. Carriers § 350.

8-211. (3858) **Effect of partial invalidity of act.** If any of the provisions of this act shall be held unconstitutional, or for any reason shall be held void, such holding shall not have the effect to nullify the remaining parts or provisions of this act, but the parts not so held to be void shall nevertheless remain in full force and effect.

History: En. Sec. 11, Ch. 8, Ex. L. 1921; re-en. Sec. 3858, R. C. M. 1921.

Collateral References

Statutes⇐64 (2).
82 C.J.S. Statutes §§ 101, 106, 107.

CHAPTER 3

NAVIGATION—INSPECTION OF BOATS AND VESSELS

(Repealed—Section 1, Chapter 129, Laws of 1947)

CHAPTER 4

CARRIERS OF PERSONS, PROPERTY AND MESSAGES—DUTIES AND OBLIGATIONS

Section 8-401. Contract of carriage.
8-402. Obligations of gratuitous carriers.
8-403. Obligations of gratuitous carrier who has begun to carry.
8-404. Degree of care required.
8-405. General duties of carrier.
8-406. Vehicles.
8-407. Not to overload his vehicle.
8-408. Treatment of passengers.
8-409. Rate of speed and delays.
8-410. General definitions.
8-411. Care and diligence required of carriers.
8-412. Carrier to obey directions.
8-413. Conflict of orders.
8-414. Delivery of freight.
8-415. Place of delivery.
8-416. Obligations of carrier when freight not delivered to consignee.
8-417. How carrier may terminate his liability.
8-418. Obligations of carriers of messages.
8-419. Degree of care and diligence required.

8-401. (7811) **Contract of carriage.** The contract of carriage is a contract for the conveyance of property, persons, or messages from one place to another.

History: En. Sec. 2770, Civ. C. 1895; re-en. Sec. 5296, Rev. C. 1907; re-en. Sec. 7811, R. C. M. 1921. Cal. Civ. C. Sec. 2085. Field Civ. C. Sec. 1085.

Collateral References

Carriers⇐3.
13 C.J.S. Carriers, §§ 1, 2, 4, 531.

8-402. (7812) **Obligations of gratuitous carriers.** Carriers without reward are subject to the same rules as employees without reward, except so far as is otherwise provided by sections 8-401 to 8-822 of this code.

History: En. Sec. 2771, Civ. C. 1895; re-en. Sec. 5297, Rev. C. 1907; re-en. Sec. 7812, R. C. M. 1921. Cal. Civ. C. Sec. 2089. Field Civ. C. Sec. 1090.

Compiler's Note

Sections 8-501 to 8-507 and 8-816 to 8-818, contained in the reference in this section to sections 8-401 to 8-822, were repealed by Sec. 10-102, Ch. 264, Laws 1963.

References

John v. Northern Pacific Ry. Co., 42 M 18, 49, 111 P 632.

8-403. (7813) **Obligations of gratuitous carrier who has begun to carry.** A carrier without reward, who has begun to perform his undertaking, must complete it in like manner as if he had received a reward, unless he restores the person or thing carried to as favorable a position as before he commenced his carriage.

History: En. Sec. 2772, Civ. C. 1895; re-en. Sec. 5298, Rev. C. 1907; re-en. Sec. 7813, R. C. M. 1921. Cal. Civ. C. Sec. 2090. Field Civ. C. Sec. 1091.

References

John v. Northern Pacific Ry. Co., 42 M 18, 31, 111 P 632.

Collateral References

Carriers⇐11 et seq., 42.
13 C.J.S. Carriers §§ 15 et seq., 67.

8-404. (7814) **Degree of care required.** A carrier of persons without reward must use ordinary care and diligence for their safe carriage.

History: En. Sec. 2780, Civ. C. 1895; re-en. Sec. 5299, Rev. C. 1907; re-en. Sec. 7814, R. C. M. 1921. Cal. Civ. C. Sec. 2096. Field Civ. C. Sec. 1092.

Free Passenger

One riding on a railway pass is not a passenger for reward, but a free passenger; the company is a carrier without reward, and is answerable to the passenger for ordinary negligence, without considering any exemption conditions of the pass. John v. Northern Pacific Ry. Co., 42 M 18, 30, 111 P 632.

Passenger Carried without Reward

A carrier owes a higher degree of diligence to one carried for a reward than to one carried without a reward, and was only bound to exercise ordinary care for the safety of a passenger carried without reward, so that the injury of such a passenger by the happening of an accident only showed ordinary negligence by the carrier, and not gross negligence. John v. Northern Pacific Ry. Co., 42 M 18, 30, 111 P 632.

References

Phillips v. Butte Jockey Club & Fair Assn., 46 M 338, 347, 127 P 1011.

Collateral References

Carriers⇐262 et seq.
13 C.J.S. Carriers § 640 et seq.

8-405. (7815) **General duties of carrier.** A carrier of persons for reward must use the utmost care and diligence for their safe carriage, must provide everything necessary for that purpose, and must exercise to that end a reasonable degree of skill.

History: En. Sec. 2790, Civ. C. 1895; re-en. Sec. 5300, Rev. C. 1907; re-en. Sec. 7815, R. C. M. 1921. Cal. Civ. C. Sec. 2100. Field Civ. C. Sec. 1093.

Application of Statute

While a carrier is not an insurer of a passenger's safety, yet its duty toward a passenger is spelled out in this section. Risken v. Northern Pacific Ry. Co., 137 M 57, 350 P 2d 831, 837.

Although this statute imposes upon the carrier the duty to exercise "the highest degree of care," it is but declaratory of the common law and does not constitute the carrier an insurer of the passenger's safety. Wilson v. Northland Greyhound Lines, Inc., 166 F Supp 667, 669.

Carrier Not Insurer

This section, imposing upon the carrier the duty to exercise toward a passenger for hire the highest degree of care, does not constitute the carrier an insurer of the passenger's safety. Heck v. Northern Pacific Ry. Co., 59 M 106, 113, 114, 196 P 521.

Construction of Section

This section is merely declaratory of the common law. Taillon v. Mears, 29 M 161, 169, 74 P 421.

Degree of Negligence

As between the owner or manager of exhibitions and places of amusement and the carrier of a passenger for hire, the same measure of duty is not demanded; only ordinary care, as in the gratuitous carriage of persons, under section 8-404, is required of the former, while the utmost care is required of the latter. Phillips v. Butte Jockey Club & Fair Assn., 46 M 338, 347, 127 P 1011.

Ordinary care is the measure of duty which the law imposes upon the owners and managers of exhibitions and places of amusement to prevent injury to patrons who have paid for the privileges accorded to them; thus, the owner of the grand stand at a race-course is not answerable for an injury to a patron, caused by the latter's tripping on a nail and falling on a broken board, while he was descending the stairway, where the owner did not have notice, either actual or implied, of such defects. Phillips v. Butte Jockey Club & Fair Assn., 46 M 338, 347, 127 P 1011.

Under the law of this state a difference in degrees of negligence is recognized. Liston v. Reynolds, 69 M 480, 497, 223 P 507. See also Brown v. Columbia Amusement Co., 91 M 174, 188, 6 P 2d 874.

References

Neary v. Northern Pacific Ry. Co., 41 M 480, 491, 110 P 226; John v. Northern Pacific Ry. Co., 42 M 18, 29, 111 P 632; Stiles v. Gove, 345 F 2d 991.

Collateral References

Carriers⇐202.

13 C.J.S. Carriers § 640.

14 Am. Jur. 2d 219, Carriers, § 736; 37 Am. Jur. 592, Motor Transportation, § 140 et seq.

Carrier's liability to person in street for purpose of boarding its car. 7 ALR 2d 549.

Open door as ground for liability of carrier for injury to passenger falling or alighting from vehicle. 7 ALR 2d 1427.

Liability of carrier for injury to passenger due to improper lighting. 8 ALR 2d 233.

Liability of motorbus carrier to passenger injured through slipping and falling in alighting from vehicle. 9 ALR 2d 938.

Liability of carrier for injuries to persons boarding vehicle for social or other purposes in connection with passengers. 11 ALR 2d 1075.

Death or injury to occupant of airplane from collision or near collision with another aircraft. 12 ALR 2d 677.

Limitation of liability for personal injury by air carriers. 13 ALR 2d 337.

Liability of air carrier to one injured or killed by slip or fall at airport. 3 ALR 3d 938.

8-406. (7816) **Vehicles.** A carrier of persons for reward is bound to provide vehicles safe and fit for the purposes to which they are put, and is not excused for default in this respect by any degree of care.

History: En. Sec. 2791, Civ. C. 1895; re-en. Sec. 5301, Rev. C. 1907; re-en. Sec. 7816, R. C. M. 1921. Cal. Civ. C. Sec. 2101. Field Civ. C. Sec. 1094.

Defective Appliance

The measure of a carrier's responsibility for injuries to a passenger, due to a defective appliance, is not that set forth in the statute, unless in the action to enforce the responsibility the statute is expressly invoked. Batch v. Helena Light & Ry. Co., 52 M 517, 521, 159 P 411.

Determination of Appeal

Where a personal injury case against a carrier was tried as though the latter's duty to provide safe conveyance was governed by the common law and without regard to this section, it will be determined

on appeal under the same theory. Batch v. Helena Light & Ry. Co., 52 M 517, 521, 159 P 411.

References

Stiles v. Gove, 345 F 2d 991.

Collateral References

Carriers⚷288 et seq.
13 C.J.S. Carriers § 735 et seq.
14 Am. Jur. 2d 312, Carriers, § 871.

Shortage of cars as affecting liability of carrier for failure to furnish cars. 10 ALR 342.

Power of public service commission to require carrier to furnish special type of cars. 23 ALR 411.

Public service commission's power in respect to alteration or extension of passenger service. 70 ALR 841.

Construction and application of regulations respecting type or condition of automobile used in transportation of passengers for hire. 7 ALR 2d 1266.

Contributory negligence of passenger alighting from improperly lighted vehicle. 8 ALR 2d 242.

Contributory negligence of passenger injured through fall while alighting from motorbus. 9 ALR 2d 945, 952, 953, 957.

Intoxication of person injured or killed as affecting applicability of last clear chance doctrine. 26 ALR 2d 308.

Liability of carrier to one injured by article thrown from conveyance by passenger. 35 ALR 2d 788.

8-407. (7817) **Not to overload his vehicle.** A carrier of persons for reward must not overcrowd or overload his vehicle.

History: En. Sec. 2792, Civ. C. 1895; re-en. Sec. 5302, Rev. C. 1907; re-en. Sec. 7817, R. C. M. 1921. Cal. Civ. C. Sec. 2102. Field Civ. C. Sec. 1095.

References

Previsich v. Butte Electric Ry. Co., 47 M 170, 179, 131 P 25.

Collateral References

Carriers⚷296.
13 C.J.S. Carriers § 745.

8-408. (7818) **Treatment of passengers.** A carrier of persons for reward must give to passengers all such accommodations as are usual and reasonable, and must treat them with civility, and give them a reasonable degree of attention.

History: En. Sec. 2793, Civ. C. 1895; re-en. Sec. 5303, Rev. C. 1907; re-en. Sec. 7818, R. C. M. 1921. Cal. Civ. C. Sec. 2103. Field Civ. C. Sec. 1096.

Cross-References

Ejection of passengers, sec. 8-809.

Refusal to receive passengers, penalty, sec. 94-35-104.

Use of force in expelling passengers, sec. 94-605.

References

Previsich v. Butte Electric Ry. Co., 47 M 170, 179, 131 P 25.

Collateral References

Carriers⚷280 et seq.
13 C.J.S. Carriers § 640 et seq.

Civil liability for insulting or abusive language not amounting to defamation. 15 ALR 2d 108.

Liability of carrier to passenger for injury due to crowded condition of motorbus, or pushing or crowding of passengers therein. 26 ALR 2d 1219.

Attempts to board moving car or train as contributory negligence or assumption of risk. 31 ALR 2d 931.

Availability of last clear chance doctrine to defendant. 32 ALR 2d 543.

Liability of motor carrier to passenger for injury assertedly caused by failure to heat conveyance adequately. 33 ALR 2d 1358.

Duty of railroad to passengers to keep vestibule of car free from debris or foreign substances other than snow or ice. 34 ALR 2d 360.

Carrier's liability to passenger injured by landslide, or the like, obstructing tracks or derailing train. 34 ALR 2d 835.

Liability of lessor motor carrier for lessee's torts or nonperformance of franchise duties. 34 ALR 2d 1121.

Carrier-passenger relationship as between railroad and express company employee. 36 ALR 2d 1412.

Racial segregation by common carriers. 38 ALR 2d 1190.

Status as passenger of person boarding motorbus. 93 ALR 2d 240.

8-409. (7819) **Rate of speed and delays.** A carrier of persons for reward must travel at a reasonable rate of speed, and without any unreasonable delay, or deviation from his proper route.

History: En. Sec. 2794, Civ. C. 1895; re-en. Sec. 5304, Rev. C. 1907; re-en. Sec. 7819, R. C. M. 1921. Cal. Civ. C. Sec. 2104. Field Civ. C. Sec. 1097.

References

John v. Northern Pacific Ry. Co., 42 M 18, 49, 111 P 632.

Collateral References

Carriers⇨264.

13 C.J.S. Carriers §§ 643, 661.

Carrier's liability to passenger for failure to keep train to scheduled time. 52 ALR 1332.

8-410. (7820) **General definitions.** Property carried is called freight; the reward, if any, to be paid for its carriage is called freightage; the person who delivers the freight to the carrier is called the consignor; and the person to whom it is to be delivered is called the consignee.

History: En. Sec. 2800, Civ. C. 1895; re-en. Sec. 5305, Rev. C. 1907; re-en. Sec. 7820, R. C. M. 1921. Cal. Civ. C. Sec. 2110. Field Civ. C. Sec. 1098.

Collateral References

Carriers⇨39 et seq.

13 C.J.S. Carriers §§ 27, 28, 143 et seq.

13 Am. Jur. 2d 740, Carriers, § 225 et seq.

8-411. (7821) **Care and diligence required of carriers.** A carrier of property for reward must use at least ordinary care and diligence in the performance of all his duties. A carrier without reward must use at least slight care and diligence.

History: En. Sec. 2810, Civ. C. 1895; re-en. Sec. 5306, Rev. C. 1907; re-en. Sec. 7821, R. C. M. 1921. Cal. Civ. C. Sec. 2114. Field Civ. C. Sec. 1099.

Degrees of Negligence

Under the law of this state a difference in degrees of negligence is recognized. Liston v. Reynolds, 69 M 480, 497, 223 P 507.

References

Neary v. Northern Pacific Ry. Co., 41 M 480, 491, 110 P 226; John v. Northern Pacific Ry. Co., 42 M 18, 29, 111 P 632.

Collateral References

Carriers⇨107 et seq.

13 C.J.S. Carriers §§ 60, 71, 74, 333 et seq.

Carrier's liability for loss through weight deficiency of goods shipped. 39 ALR 2d 325.

Shipper's misdescription of goods as affecting carrier's liability for loss or damage. 1 ALR 3d 736.

Liability of carrier by land for damage to goods resulting from improper packing by carrier. 7 ALR 3d 723.

8-412. (7822) **Carrier to obey directions.** A carrier must comply with the directions of the consignor or consignee to the same extent as an employee is bound to comply with those of his employer.

History: En. Sec. 2811, Civ. C. 1895; re-en. Sec. 5307, Rev. C. 1907; re-en. Sec. 7822, R. C. M. 1921. Cal. Civ. C. Sec. 2115. Field Civ. C. Sec. 1100.

Collateral References

Carriers⇨77 et seq.

13 C.J.S. Carriers §§ 40, 60, 160 et seq.

8-413. (7823) **Conflict of orders.** When the directions of a consignor and consignee are conflicting, the carrier must comply with those of the consignor in respect to all matters except the delivery of the freight, as to which he must comply with the directions of the consignee, unless the consignor has specially forbidden the carrier to receive orders from the consignee inconsistent with his own.

History: En. Sec. 2812, Civ. C. 1895; re-en. Sec. 5308, Rev. C. 1907; re-en. Sec. 7823, R. C. M. 1921. Cal. Civ. C. Sec. 2118. Field Civ. C. Sec. 1101.

8-414. (7824) **Delivery of freight.** A carrier of property must deliver it to the consignee, at the place to which it is addressed, in the manner usual at that place.

History: En. Sec. 2813, Civ. C. 1895; re-en. Sec. 5309, Rev. C. 1907; re-en. Sec. 7824, R. C. M. 1921. Cal. Civ. C. Sec. 2118. Field Civ. C. Sec. 1103.

Cross-Reference

Failure to receive or deliver, damages, secs. 17-315 to 17-317.

Application of Section

This section is not meant for cases of actual, manual delivery, because these need no aid from statute or custom, but to those cases where, by following custom, a delivery may be accomplished short of the actual, manual transfer of the goods. Gary Bros. & Gaffke Co. v. Chicago M. & P. S. Ry. Co., 49 M 524, 532, 143 P 955.

Collateral References

Carriers⇨84, 86.

13 C.J.S. Carriers §§ 42, 160, 163, 164, 170, 172.

13 Am. Jur. 2d 887, Carriers, § 405 et seq.

Shipper's ratification of carrier's delivery at wrong destination. 15 ALR 2d 821.

Tort liability of carrier for theft by servant. 15 ALR 2d 842.

Railroad's carrier's liability for loss of baggage or effects accompanying passenger. 32 ALR 2d 630.

8-415. (7825) **Place of delivery.** If there is no usage to the contrary at the place of delivery, freight must be delivered as follows:

1. If carried on a railway owned or managed by the carrier, it may be delivered at the station nearest to the place to which it is addressed.

2. If carried by water, it may be delivered at a wharf or other suitable landing, at or within a reasonable distance from the place of address.

3. In other cases, it must be delivered to the consignee or his agent, personally, if either can, with reasonable diligence, be found.

History: En. Sec. 2814, Civ. C. 1895; re-en. Sec. 5310, Rev. C. 1907; re-en. Sec. 7825, R. C. M. 1921. Cal. Civ. C. Sec. 2119. Based on Field Civ. C. Sec. 1104.

Construction of Section

This section does not define the acts which may constitute delivery in the absence of custom. Gary Bros. & Gaffke Co. v. Chicago M. & P. S. Ry. Co., 49 M 524, 532, 143 P 955.

8-416. (7826) **Obligations of carrier when freight not delivered to consignee.** If, for any reason, a carrier does not deliver freight to the consignee or his agent personally, he must give notice to the consignee of its arrival, and keep the same in safety, upon his responsibility as a warehouseman, until the consignee has had a reasonable time to remove it. If the place of residence or business of the consignee be unknown to the carrier, he may give the notice by letter dropped in the nearest post office.

History: En. Sec. 2815, Civ. C. 1895; re-en. Sec. 5311, Rev. C. 1907; re-en. Sec. 7826, R. C. M. 1921. Cal. Civ. C. Sec. 2120. Based on Field Civ. C. Sec. 1105.

Application of Section

This section does not apply if a personal delivery is claimed, and if a personal delivery is not claimed, and this section does not apply, its effect is not to relieve from all liability, but to change the liability from that of carrier to that of warehouseman. Gary Bros. & Gaffke Co. v. Chicago M. & P. S. Ry. Co., 49 M 524, 532, 143 P 955.

Collateral References

Carriers⇨85.

13 C.J.S. Carriers § 153.

8-417. (7827) **How carrier may terminate his liability.** If a consignee does not accept and remove freight within a reasonable time after the carrier has fulfilled his obligation to deliver, or duly offered to fulfill the same, the carrier may exonerate himself from further liability by placing the freight in a suitable warehouse on storage, on account of the consignee, and giving notice thereof to him.

History: En. Sec. 2816, Civ. C. 1895; re-en. Sec. 5312, Rev. C. 1907; re-en. Sec. 7827, R. C. M. 1921. Cal. Civ. C. Sec. 2121. Field Civ. C. Sec. 1106.

References

Gary Bros. & Gaffke Co. v. Chicago M. & P. S. Ry. Co., 49 M 524, 532, 143 P 955.

Collateral References

Carriers⇨114.

13 C.J.S. Carriers §§ 153, 185, 333.

8-418. (7844) **Obligations of carriers of messages.** A carrier of messages for reward, other than by telegraph or telephone, must deliver them at the place to which they are addressed, or to the person for whom they are intended. Such carrier, by telegraph or telephone, must deliver them at such place and to such person, provided the place of address, or the person for whom they are intended, is within a distance of two miles from the main office of the carrier in the city or town to which the messages are transmitted, and the carrier is not required, in making the delivery, to pay on his route toll or ferriage; but for any distance beyond one mile from such office, compensation may be charged for a messenger employed by the carrier.

History: En. Sec. 2860, Civ. C. 1895; re-en. Sec. 5330, Rev. C. 1907; re-en. Sec. 7844, R. C. M. 1921. Cal. Civ. C. Sec. 2161.

Cross-References

Damages for refusal of message or postponement, sec. 8-822.

Neglect or postponement of delivery, of telegraph messages, penalty, sec. 94-35-218.

Order of transmission, sec. 8-820.

Collateral References

Telecommunications⇨146.

86 C.J.S. Telegraphs, Telephones, Radio, and Television § 141.

52 Am. Jur., Telegrams and Telephones, p. 121, § 91 et seq.; p. 131, § 103 et seq.

Duty of telegraph company to notify sender of message in case of inability to transmit or deliver promptly. 17 ALR 109 and 55 ALR 639.

Absence of sendee from address given as affecting duty of telegraph company as to delivery of message. 63 ALR 808.

Ignorance of error or delay as affecting requirement as to time for filing claim. 66 ALR 199.

Right of one neither sender nor addressee to recover against telegraph company because of delay or mistake. 72 ALR 1198.

Duty and liability of telephone company for failure to deliver, relay, or transmit message. 78 ALR 661.

What amounts to waiver of requirement of written claim within specified time as condition of telegraph company's liability. 129 ALR 403.

Right or duty to render or to refuse telephone or telegraph service that may facilitate betting on horse racing or other sports. 153 ALR 463.

Damages recoverable for mistake in transmission or delay in delivery of telegram ordering supplies or machinery for a manufacturing or processing business. 154 ALR 719.

8-419. (7845) **Degree of care and diligence required.** A carrier of messages for reward must use great care and diligence in the transmission and delivery of messages.

History: En. Sec. 2861, Civ. C. 1895; re-en. Sec. 5331, Rev. C. 1907; re-en. Sec. 7845, R. C. M. 1921. Cal. Civ. C. Sec. 2162. Field Civ. C. Sec. 1133.

Degrees of Negligence

Under the law of this state a difference in degrees of negligence is recognized. Liston v. Reynolds, 69 M 480, 497, 223 P 507.

References

Neary v. Northern Pacific Ry. Co., 41 M 480, 491, 110 P 226; John v. Northern Pacific Ry. Co., 42 M 18, 29, 111 P 632; Davenport v. Western Union Telegraph Co., 91 M 570, 9 P 2d 172.

Collateral References

Punitive damages for employee's negligence in respect to delivery of telegrams. 89 ALR 361.

CHAPTER 5

BILLS OF LADING

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

8-501 to 8-507. (7828 to 7834) **Repealed.**

Repeal

These sections (Secs. 2830 to 2836, Civ. C. 1895; Sec. 1, p. 154, L. 1901), relating to bills of lading, were repealed by Sec. 10-102, Ch. 264, Laws 1963. For present provisions, see sec. 87A-7-101 et seq.

CHAPTER 6

FREIGHTAGE—RIGHTS AND DUTIES OF CARRIER, CONSIGNOR AND CONSIGNEE

Section 8-601. When freightage is to be paid.
8-602. Consignor—when liable for freightage.
8-603. Consignee—when liable.
8-604. Natural increase of freight.
8-605. Apportionment by contract.
8-606. Apportionment by contract—no objection on partial delivery.
8-607. Apportionment according to distance.
8-608. Freight carried further than agreed, etc.
8-609. Carrier's lien for freightage.

8-601. (7835) **When freightage is to be paid.** A carrier may require his freightage to be paid upon his receiving the freight; but if he does not demand it then, he cannot until he is ready to deliver the freight to the consignee.

History: En. Sec. 2840, Civ. C. 1895; re-en. Sec. 5321, Rev. C. 1907; re-en. Sec. 7835, R. C. M. 1921. Field Civ. C. Sec. 1115.

Collateral References

Carriers⇨195.
13 C.J.S. Carriers § 317.
13 Am. Jur. 2d 930, Carriers, § 462 et seq.

8-602. (7836) **Consignor—when liable for freightage.** The consignor of freight is presumed to be liable for the freightage, but if the contract between him and the carrier provides that the consignee shall pay it, and the carrier allows the consignee to take the freight, he cannot afterwards recover the freightage from the consignor.

History: En. Sec. 2841, Civ. C. 1895; re-en. Sec. 5322, Rev. C. 1907; re-en. Sec. 7836, R. C. M. 1921. Cal. Civ. C. Sec. 2137. Field Civ. C. Sec. 1116.

Collateral References

Carriers⇨194.
13 C.J.S. Carriers § 316.
13 Am. Jur. 2d 941, Carriers, § 472.

8-603. (7837) **Consignee—when liable.** The consignee of freight is liable for the freightage, if he accepts the freight with notice of the intention of the consignor that he should pay it.

History: En. Sec. 2842, Civ. C. 1895; re-en. Sec. 5323, Rev. C. 1907; re-en. Sec. 7837, R. C. M. 1921. Cal. Civ. C. Sec. 2138. Field Civ. C. Sec. 1117.

Collateral References

13 Am. Jur. 2d 943, Carriers, § 473.

8-604. (7838) **Natural increase of freight.** No freightage can be charged upon the natural increase of freight.

History: En. Sec. 2843, Civ. C. 1895; re-en. Sec. 5324, Rev. C. 1907; re-en. Sec. 7838, R. C. M. 1921. Cal. Civ. C. Sec. 2139. Field Civ. C. Sec. 1118.

Collateral References

Carriers⇨189.
13 C.J.S. Carriers § 314.

8-605. (7839) **Apportionment by contract.** If freightage is apportioned by a bill of lading or other contract made between a consignor and carrier, the carrier is entitled to payment, according to the apportionment, for so much as he delivers.

History: En. Sec. 2844, Civ. C. 1895; re-en. Sec. 5325, Rev. C. 1907; re-en. Sec. 7839, R. C. M. 1921. Cal. Civ. C. Sec. 2140. Field Civ. C. Sec. 1119.

8-606. (7840) **Apportionment by contract—no objection on partial delivery.** If a part of the freight is accepted by a consignee, without a specific objection that the rest is not delivered, the freightage must be apportioned and paid as to that part, though not apportioned in the original contract.

History: En. Sec. 2845, Civ. C. 1895; re-en. Sec. 5326, Rev. C. 1907; re-en. Sec. 7840, R. C. M. 1921. Cal. Civ. C. Sec. 2141. Field Civ. C. Sec. 1120.

8-607. (7841) **Apportionment according to distance.** If a consignee voluntarily receives freight at a place short of the one appointed for delivery, the carrier is entitled to a just proportion of the freightage, according to distance. If the carrier, being ready and willing, offers to complete the transit, he is entitled to the full freightage. If he does not thus offer completion, and the consignee receive the freight only from necessity, the carrier is not entitled to any freightage.

History: En. Sec. 2846, Civ. C. 1895; re-en. Sec. 5327, Rev. C. 1907; re-en. Sec. 7841, R. C. M. 1921. Cal. Civ. C. Sec. 2142. Field Civ. C. Sec. 1121.

8-608. (7842) **Freight carried further than agreed, etc.** If freight is carried further, or more expeditiously, than was agreed upon by the parties, the carrier is not entitled to additional compensation, and cannot refuse to deliver it, on demand of the consignee, at the place and time of its arrival.

History: En. Sec. 2847, Civ. C. 1895; re-en. Sec. 5328, Rev. C. 1907; re-en. Sec. 7842, R. C. M. 1921. Cal. Civ. C. Sec. 2143. Field Civ. C. Sec. 1122.

8-609. (7843) **Carrier's lien for freightage.** A carrier has a lien for freightage, which is regulated by the chapter on liens.

History: En. Sec. 2848, Civ. C. 1895; re-en. Sec. 5329, Rev. C. 1907; re-en. Sec. 7843, R. C. M. 1921. Cal. Civ. C. Sec. 2144. Field Civ. C. Sec. 1123.

Lien Here Provided Not Exclusive

The fact that a trucker who could have asserted a carrier's lien under this section failed to do so did not preclude his asserting a mechanic's lien under section 45-501. Caird Engineering Works v. Seven-Up Gold Mining Co., 111 M 471, 494, 111 P 2d 267.

Collateral References

Carriers⇨197.
13 C.J.S. Carriers § 325 et seq.
13 Am. Jur. 2d 961, Carriers, § 497.

CHAPTER 7

COMMON CARRIERS IN GENERAL

Section 8-701. Common carrier—defined.
8-702. Obligation to accept freight.
8-703. Preferences prohibited—schedule and starting.
8-704. Preferences to United States and Montana.
8-705. Starting.
8-706. Compensation.

8-707. Obligations of carrier altered only by agreement.
8-708. Certain agreements void.
8-709. Effect of written contract.
8-710. Loss of valuable letters.

8-701. (7846) **Common carrier—defined.** Everyone who offers to the public to carry persons, property, or messages, excepting only telegraphic or telephonic messages, is a common carrier of whatever he thus offers to carry.

History: En. Sec. 2870, Civ. C. 1895; re-en. Sec. 5332, Rev. C. 1907; re-en. Sec. 7846, R. C. M. 1921. Cal. Civ. C. Sec. 2168. Based on Field Civ. C. Sec. 1134.

References

Lahood v. Continental Telegraph Co., 52 M 313, 321, 157 P 639.

Collateral References

Carriers⇨3.
13 C.J.S. Carriers § 2.
13 Am. Jur. 2d 560, Carriers, § 2; 37 Am. Jur. 526, Motor Transportation, § 3.

Car pool or "share-the-expense" arrangement as subjecting vehicle operator to regulations applicable to carriers. 51 ALR 2d 1193.

Ferry operator as common carrier with respect to motor vehicles and occupants thereof. 69 ALR 2d 1011.

Air carrier of persons for hire as common or private carrier. 73 ALR 2d 346.

8-702. (7847) **Obligation to accept freight.** A common carrier must, if able to do so, accept and carry whatever is offered to him, at a reasonable time and place, of a kind that he undertakes or is accustomed to carry.

History: En. Sec. 2871, Civ. C. 1895; re-en. Sec. 5333, Rev. C. 1907; re-en. Sec. 7847, R. C. M. 1921. Cal. Civ. C. Sec. 2169. Field Civ. C. Sec. 1135.

References

Great Northern Ry. Co. v. Melton, 193 F 2d 729, 732.

Collateral References

Carriers⇨39.
13 C.J.S. Carriers §§ 27, 28, 143.
13 Am. Jur. 2d 749, Carriers, § 235 et seq.

Carrier's liability for loss through weight deficiency of goods shipped. 39 ALR 2d 235.

8-703. (7848) **Preferences prohibited—schedule and starting.** A common carrier must not give preference in time, price, or otherwise to one person over another. Every common carrier of passengers by railroad, or by vessel plying upon waters lying wholly within this state, shall establish a schedule time for the starting of trains or vessels from their respective stations or wharves, of which public notice shall be given, and shall, weather permitting, except in case of accident or detention caused by connecting lines, start their said trains or vessels at or within ten minutes after the schedule time so established and notice given, under a penalty of two hundred and fifty dollars for each neglect so to do, to be recovered by action before any court of competent jurisdiction, upon complaint filed by the county attorney of the county in the name of the state, and paid into the common school fund of the said county.

History: En. Sec. 2872, Civ. C. 1895; re-en. Sec. 5334, Rev. C. 1907; re-en. Sec. 7848, R. C. M. 1921. Cal. Civ. C. Sec. 2170.

Collateral References

Carriers⇨13.
13 C.J.S. Carriers § 348 et seq.
13 Am. Jur. 2d 702, Carriers, § 175; 14 Am. Jur. 2d 320, Carriers, § 881.

Misinformation as to running of train. 8 ALR 1183.

Liability of carrier to passenger misled by inaccuracy of timepiece maintained by it. 14 ALR 701.

Carrier's liability to passenger for failure to keep train to schedule time. 52 ALR 1332.

8-704. (7849) **Preferences to United States and Montana.** A common carrier must always give a preference in time, and may give a preference in price, to the United States and to this state.

History: En. Sec. 2873, Civ. C. 1895; re-en. Sec. 5335, Rev. C. 1907; re-en. Sec. 7849, R. C. M. 1921. Cal. Civ. C. Sec. 2171. Field Civ. C. Sec. 1137.

Collateral References

Carriers⇨13.

13 C.J.S. Carriers § 348 et seq.

8-705. (7850) **Starting.** A common carrier must start at such time and place as he announces to the public, unless detained by accident or the elements, or in order to connect with carriers on other lines of travel.

History: En. Sec. 2874, Civ. C. 1895; re-en. Sec. 5336, Rev. C. 1907; re-en. Sec. 7850, R. C. M. 1921. Cal. Civ. C. Sec. 2172.

Collateral References

Carriers⇨77, 264.

13 C.J.S. Carriers §§ 40, 60, 160, 643, 661.

8-706. (7851) **Compensation.** A common carrier is entitled to a reasonable compensation and no more, which he may require to be paid in advance. If payment thereof is refused, he may refuse to carry.

History: En. Sec. 2875, Civ. C. 1895; re-en. Sec. 5337, Rev. C. 1907; re-en. Sec. 7851, R. C. M. 1921. Cal. Civ. C. Sec. 2173. Field Civ. C. Sec. 1139.

References

Doherty v. Northern Pacific Ry. Co., 43 M 294, 304, 115 P 401.

Collateral References

Carriers⇨188 et seq., 249.

13 C.J.S. Carriers §§ 312 et seq., 581.

8-707. (7852) **Obligations of carrier altered only by agreement.** The obligations of a common carrier cannot be limited by general notice on his part, but may be limited by special contract.

History: En. Sec. 2876, Civ. C. 1895; re-en. Sec. 5338, Rev. C. 1907; re-en. Sec. 7852, R. C. M. 1921. Cal. Civ. C. Sec. 2174.

Apportionment of Loss

When a special contract limits the liability of the carrier by excluding acts of God, and it is found that damage to sheep shipped resulted from a concurrence of rainy weather, and the negligent care or inspection of the carrier, there must be a finding as to what portion of the loss was attributable to the latter cause since liability cannot be predicated upon the rain. Great Northern Ry. Co. v. Melton, 193 F 2d 729, 730, 733.

Consideration

There need not be special consideration for the special contract. There is consideration where a company agrees for $600 to haul the freight on the terms stated which includes the special contract. Great Northern Ry. Co. v. Melton, 193 F 2d 729.

Construction of Statute

This section and section 8-708, construed together, give to the carrier the right, by special contract, to provide against liability in all cases except when it arises from his gross negligence, fraud, or willful wrong. Nelson v. Great Northern Ry. Co., 28 M 297, 321, 72 P 642; John v. Northern Pacific Ry. Co., 42 M 18, 35, 111 P 632. See also Rose v. Northern Pacific Ry. Co., 35 M 70, 79, 88 P 767.

Delay in Transportation

A common carrier cannot by special contract limit its liability for delay in the transportation of property arising from its negligence, or the negligence of its servants. Nelson v. Great Northern Ry. Co., 28 M 297, 321, 72 P 642.

Collateral References

Carriers⇨147 et seq., 218, 307, 405.

13 C.J.S. Carriers §§ 88 et seq., 625 et seq., 874 et seq.

Limitation of liability for personal injury by air carrier. 13 ALR 2d 337.

8-708. (7853) **Certain agreements void.** A common carrier cannot be exonerated, by any agreement made in anticipation thereof, from liability for the gross negligence, fraud, or willful wrong of himself or his servants.

History: En. Sec. 2877, Civ. C. 1895; re-en. Sec. 5339, Rev. C. 1907; re-en. Sec. 7853, R. C. M. 1921. Cal. Civ. C. Sec. 2175. Field Civ. C. Sec. 1141.

Degrees of Negligence

Under the law of this state a difference in degrees of negligence is recognized. Liston v. Reynolds, 69 M 480, 497, 223 P 507.

References

Nelson v. Great Northern Ry. Co., 28 M 297, 321, 72 P 642; John v. Northern Pacific Ry Co., 42 M 18, 35, 111 P 632.

Collateral References

Carriers⇨147 et seq., 218, 307, 405.
13 C.J.S. Carriers §§ 52, 94, 96-98, 625 et seq., 874.
14 Am. Jur. 2d 370, 377, Carriers, §§ 942-945, 951.

Limitation of liability for personal injury by air carrier. 13 ALR 2d 337.

8-709. (7854) **Effect of written contract.** A passenger, consignor, or consignee, by accepting a ticket, bill of lading, or written contract for carriage, with a knowledge of its terms, assents to the rate of hire, the time, place, and manner of delivery therein stated. But his assent to any other modification of the carrier's rights or obligations contained in such instrument can be manifested only by his signature to the same, except as otherwise provided in the Uniform Commercial Code.

History: En. Sec. 2878, Civ. C. 1895; re-en. Sec. 5340, Rev. C. 1907; re-en. Sec. 7854, R. C. M. 1921; amd. Sec. 11-105, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2176. Field Civ. C. Sec. 1142.

Loss of Baggage

A contract made by a railway company with a passenger in the sale of a ticket, which among other recitals contained the provision that, in view of the reduced rate at which it was furnished, the carrier's liability for loss of baggage should be limited to one hundred dollars, was not void as against public policy. Rose v. Northern Pacific Ry. Co., 35 M 70, 79, 88 P 767.

Oral Negotiations Merged in Contract

Prior oral negotiations and directions as to points at which livestock should be stopped for resting and feeding were merged in the contract of shipment, where it and the waybills bore notations stating the points at which stops were to be made, and therefore parol testimony of directions to make other stops was incompetent as an attempt to vary the terms of the written contract. Cook v. Northern Pacific Ry. Co., 61 M 573, 586, 203 P 512.

Collateral References

Carriers⇨63, 68, 253 et seq.
13 C.J.S. Carriers §§ 123, 125, 131 et seq.

8-710. (7855) **Loss of valuable letters.** A common carrier is not responsible for loss or miscarriage of a letter, or package having the form of a letter, containing money or notes, bills of exchange, or other papers of value, unless he is informed at the time of its receipt of the value of its contents.

History: En. Sec. 2879, Civ. C. 1895; re-en. Sec. 5341, Rev. C. 1907; re-en. Sec. 7855, R. C. M. 1921. Cal. Civ. C. Sec. 2177.

Collateral References

Carriers⇨110.
13 C.J.S. Carriers §§ 78, 79.

CHAPTER 8

COMMON CARRIERS OF PERSONS, PROPERTY AND MESSAGES, THEIR RIGHTS AND OBLIGATIONS

Section 8-801. Obligation to carry baggage.
8-802. Baggage defined.
8-803. Liability for baggage.

8-804. Baggage—how carried and delivered.
8-805. Obligation to provide vehicles.
8-806. Seats for passengers.
8-807. Regulations for conduct of business.
8-808. Fare—when payable.
8-809. Ejection of passengers.
8-810. Fare not payable after ejection.
8-811. Carrier's lien.
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8-814. Liability for delay.
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8-816 to 8-818. Repealed.
8-819. Sale of perishable property for freight.
8-820. Order of transmission of telegraphic messages.
8-821. Order in other cases.
8-822. Damages when message is refused or postponed.

8-801. (7856) **Obligation to carry baggage.** A common carrier of persons, unless his vehicle is fitted for the reception of persons exclusively, must receive and carry a reasonable amount of baggage for each passenger without charge, except for an excess of weight over one hundred pounds to a passenger; but if such carrier be a proprietor of a stage line, he may not receive and carry for each passenger by such stage line, without charge, more than sixty pounds of baggage.

History: En. Sec. 2890, Civ. C. 1895; re-en. Sec. 5342, Rev. C. 1907; re-en. Sec. 7856, R. C. M. 1921. Cal. Civ. C. Sec. 2180. Based on Field Civ. C. Sec. 1143.

Collateral References

Carriers⇐387.
13 C.J.S. Carriers § 863.
14 Am. Jur. 2d 623, Carriers, § 1219 et seq.

8-802. (7857) **Baggage defined.** Baggage may consist of any articles intended for the use of a passenger while traveling, or for his personal equipment.

History: En. Sec. 2891, Civ. C. 1895; re-en. Sec. 5343, Rev. C. 1907; re-en. Sec. 7857, R. C. M. 1921. Cal. Civ. C. Sec. 2181. Field Civ. C. Sec. 1144.

Collateral References

Carriers⇐391.
13 C.J.S. Carriers §§ 856-861.
14 Am. Jur. 2d 626, Carriers, § 1223.

8-803. (7858) **Liability for baggage.** The liability of a carrier for baggage received by him with a passenger is the same as that of a common carrier of property.

History: En. Sec. 2892, Civ. C. 1895; re-en. Sec. 5344, Rev. C. 1907; re-en. Sec. 7858, R. C. M. 1921. Cal. Civ. C. Sec. 2182. Field Civ. C. Sec. 1145.

Cross-Reference

Damages, failure of carrier to receive or deliver goods, secs. 17-315 to 17-317.

Limitation of Liability

A contract made by a carrier with a passenger in the sale of a ticket, providing that in view of the reduced rate at which transportation is furnished, the carrier's liability for baggage shall be limited to one hundred dollars, is valid. Rose v. Northern Pacific Ry. Co., 35 M 70, 80, 88 P 767.

Collateral References

Carriers⇐397 et seq.
13 C.J.S. Carriers § 867 et seq.
14 Am. Jur. 2d 632, Carriers, § 1234.

Liability of motor carrier for loss of passenger's baggage or packages. 68 ALR 2d 1350.

8-804. (7859) **Baggage—how carried and delivered.** A common carrier must deliver every passenger's baggage, whether within the prescribed

weight or not, immediately upon the arrival of the passenger at his destination; and, unless the vehicle would be overcrowded or overloaded thereby, must carry it on the same vehicle by which he carries the passenger to whom it belonged, except that where baggage is transported by rail, it must be checked and carried in a regular baggage car; and whenever passengers neglect or refuse to have their baggage so checked and transported, it is carried at their risk.

History: En. Sec. 2893, Civ. C. 1895; re-en. Sec. 5345, Rev. C. 1907; re-en. Sec. 7859, R. C. M. 1921. Cal. Civ. C. Sec. 2183.

Collateral References

Carriers⇨395.
13 C.J.S. Carriers § 883.

8-805. (7860) **Obligation to provide vehicles.** A common carrier of persons must provide a sufficient number of vehicles to accommodate all the passengers who can be reasonably expected to require carriage at any one time.

History: En. Sec. 2894, Civ. C. 1895; re-en. Sec. 5346, Rev. C. 1907; re-en. Sec. 7860, R. C. M. 1921. Cal. Civ. C. Sec. 2184. Based on Field Civ. C. Sec. 1147.

Cross-Reference

Refusal to receive passengers, penalty, sec. 94-35-104.

Collateral References

Carriers⇨226.
13 C.J.S. Carriers § 645.
14 Am. Jur. 2d 312, Carriers, § 871.

Shortage of cars as affecting liability of carrier for failure to furnish cars. 10 ALR 342.

Power of public service commission to require carrier to furnish special type of cars. 23 ALR 411.

Public service commission's power in respect to alteration or extension of passenger service. 70 ALR 841.

8-806. (7861) **Seats for passengers.** A common carrier of persons must provide every passenger with a seat. He must not overload his vehicle by receiving and carrying more passengers than its rated capacity allows.

History: En. Sec. 2895, Civ. C. 1895; re-en. Sec. 5347, Rev. C. 1907; re-en. Sec. 7861, R. C. M. 1921. Cal. Civ. C. Sec. 2185. Based on Field Civ. C. Sec. 1148.

References

Previsich v. Butte Electric Ry. Co., 47 M 170, 179, 131 P 25.

Collateral References

14 Am. Jur. 2d 315, Carriers, § 874.

8-807. (7862) **Regulations for conduct of business.** A common carrier of persons may make rules for the conduct of his business, and may require passengers to conform to them, if they are lawful, public, uniform in their application, and reasonable.

History: En. Sec. 2896, Civ. C. 1895; re-en. Sec. 5348, Rev. C. 1907; re-en. Sec. 7862, R. C. M. 1921. Cal. Civ. C. Sec. 2186. Field Civ. C. Sec. 1149.

Pullman Cars

A person who enters a train consisting wholly of pullman cars, without paying pullman car fare, in addition to the purchase of a regular first-class ticket, may, if he refuses to pay such fare, and if other trains have been provided for his carriage, be ejected, if done without unnecessary force; it is a passenger's duty to comply with all reasonable rules of the railway company. Doherty v. Northern Pacific Ry. Co., 43 M 294, 304, 115 P 401.

Collateral References

Carriers⇨267.
13 C.J.S. Carriers § 573.

8-808. (7863) **Fare—when payable.** A common carrier may demand the fare of passengers, either at starting or at any subsequent time.

History: En. Sec. 2897, Civ. C. 1895; re-en. Sec. 5349, Rev. C. 1907; re-en. Sec. 7863, R. C. M. 1921. Cal. Civ. C. Sec. 2187. Field Civ. C. Sec. 1150.

References

Doherty v. Northern Pacific Ry. Co., 43 M 294, 304, 115 P 401.

Collateral References

Carriers⇨250.
13 C.J.S. Carriers §§ 591, 594.
14 Am. Jur. 2d 255, Carriers, § 785 et seq.

8-809. (7864) **Ejection of passengers.** A passenger who refuses to pay his fare, or conform to any lawful regulation of the carrier, may be ejected from the vehicle by the carrier. But this must be done with as little violence as possible, and at any usual stopping place or near some dwelling house.

History: En. Sec. 2898, Civ. C. 1895; re-en. Sec. 5350, Rev. C. 1907; re-en. Sec. 7864, R. C. M. 1921. Cal. Civ. C. Sec. 2188. Based on Field Civ. C. Sec. 1151.

Traveling Second-Class

One traveling on a second-class, limited, railroad ticket, without stop-over privileges, may, if he does stop over, especially if he has a conductor's check, in place of his ticket, which informs him of his rights, be lawfully ejected from another train on which he takes passage, if he refuses to pay full fare. Sanden v. Northern Pacific Ry. Co., 43 M 209, 219, 115 P 408.

Collateral References

Carriers⇨350 et seq.
13 C.J.S. Carriers § 806 et seq.
14 Am. Jur. 2d 517, Carriers, § 1099 et seq.

Employer's liability for ejection from vehicle by taxicab or motorbus driver. 53 ALR 2d 741.

Sleeping-car company's liability for ejection of passenger by employee. 60 ALR 2d 1115.

Carrier's ejection of passenger who becomes sick or is injured en route. 92 ALR 2d 667.

8-810. (7865) **Fare not payable after ejection.** After having ejected a passenger, a carrier has no right to require the payment of any part of his fare.

History: En. Sec. 2899, Civ. C. 1895; re-en. Sec. 5351, Rev. C. 1907; re-en. Sec. 7865, R. C. M. 1921. Cal. Civ. C. Sec. 2190. Field Civ. C. Sec. 1152.

Collateral References

Carriers⇨249.
13 C.J.S. Carriers § 581.

8-811. (7866) **Carrier's lien.** A common carrier has a lien upon the baggage of a passenger for the payment of such fare as he is entitled to from him. This lien is regulated by the chapter on liens.

History: En. Sec. 2900, Civ. C. 1895; re-en. Sec. 5352, Rev. C. 1907; re-en. Sec. 7866, R. C. M. 1921. Cal. Civ. C. Sec. 2191. Field Civ. C. Sec. 1153.

Collateral References

Carriers⇨407.
13 C.J.S. Carriers § 864.

8-812. (7867) **Liability of inland carriers for loss.** Unless the consignor accompanies the freight and retains exclusive control thereof, an inland common carrier of property is liable, from the time that he accepts until he relieves himself from liability, pursuant to sections 8-414 to 8-417, for the loss or injury thereof from any cause whatever, except:

1. An inherent defect, vice, weakness, or a spontaneous action of the property itself;
2. The act of a public enemy of the United States, or of this state;
3. The act of the law; or,
4. An irresistible superhuman cause.

History: En. Sec. 2910, Civ. C. 1895; re-en. Sec. 5353, Rev. C. 1907; re-en. Sec. 7867, R. C. M. 1921. Cal. Civ. C. Sec. 2194. Field Civ. C. Sec. 1154.

Cross-Reference

Failure to receive or deliver, damages, secs. 17-315 to 17-317.

Application of Section

Where a carrier transported sheep, and during transportation the sheep were exposed to rain and became wet and dirty and were bruised and injured so as to become sick and some died, the damage was not caused by an "inherent defect, vice, weakness, or spontaneous action" of the sheep and hence the carrier is not excepted from liability by this section. Great Northern Ry. Co. v. Melton, 193 F 2d 729, 730.

Injury to Livestock

In the absence of evidence that injury to livestock while being transported on a railway was caused by their bad temper, restiveness, viciousness, etc., an instruction to that effect was properly refused. Heitman v. Chicago, Milwaukee & St. Paul Ry. Co., 45 M 406, 416, 123 P 401.

References

Wahle v. Great Northern Ry. Co., 41 M 326, 334, 109 P 713; Gary Bros. & Gaffke Co. v. Chicago M. & P. S. Co., 49 M 524, 532, 143 P 955; Wibaux Realty Co. v. Northern Pacific Ry. Co., 101 M 126, 149, 54 P 2d 1175.

Collateral References

Carriers⇨107 et seq.

13 C.J.S. Carriers §§ 60, 71, 74, 333 et seq.

13 Am. Jur. 2d 812, Carriers, § 315 et seq.

Deviation by carrier in transportation of property. 33 ALR 2d 145.

8-813. (7868) **When exemptions do not apply.** A common carrier is liable, even in the cases excepted by the last section, if his ordinary negligence exposes the property to the cause of the loss.

History: En. Sec. 2911, Civ. C. 1895; re-en. Sec. 5354, Rev. C. 1907; re-en. Sec. 7868, R. C. M. 1921. Cal. Civ. C. Sec. 2195. Field Civ. C. Sec. 1155.

Degrees of Negligence

Under the law of this state a difference in degrees of negligence is recognized. Liston v. Reynolds, 69 M 480, 497, 223 P 507.

Inadequate Facilities for Transportation

If a common carrier receives property for transportation, when he knows, or by the exercise of ordinary care should know, that it is likely to be exposed to injury or loss because of inadequate facilities for its transportation, he is answerable for any loss following the acceptance of the property. Wahle v. Great Northern Ry. Co., 41 M 326, 334, 109 P 713.

References

Neary v. Northern Pacific Ry. Co., 41 M 480, 491, 110 P 226; John v. Northern Pacific Ry. Co., 42 M 18, 29, 111 P 632.

8-814. (7869) **Liability for delay.** A common carrier is liable for delay only when it is caused by his want of ordinary care and diligence.

History: En. Sec. 2912, Civ. C. 1895; re-en. Sec. 5355, Rev. C. 1907; re-en. Sec. 7869, R. C. M. 1921. Cal. Civ. C. Sec. 2196. Field Civ. C. Sec. 1156.

Cross-Reference

Damages for carrier's delay, 17-317.

Degrees of Negligence

Under the law of this state a difference in degrees of negligence is recognized. Liston v. Reynolds, 69 M 480, 497, 223 P 507.

Want of Ordinary Care

The language of this section is equivalent to saying that a common carrier shall be liable for damages resulting from delays caused by its want of ordinary care and diligence, that is, for ordinary negligence. This being a legislative declaration as to when the common carrier shall be liable for delay, it cannot be abridged by special contract. It is a legislative limitation upon the previous general power given to contract. Nelson v. Great Northern Ry. Co., 28 M 297, 324, 72 P 642. See Russell v. Chicago, Burlington & Quincy Ry. Co., 37 M 1, 7, 94 P 488.

References

Wahle v. Great Northern Ry. Co., 41 M 326, 334, 109 P 713; Neary v. Northern Pacific Ry. Co., 41 M 480, 491, 110 P 226; John v. Northern Pacific Ry. Co., 42 M 18, 29, 111 P 632.

Collateral References

Carriers⇐98.

13 C.J.S. Carriers §§ 191-193, 195.

13 Am. Jur. 2d 850, Carriers, § 364 et seq.

Strike on connecting line as defense to carrier's liability for delay, or damages incident to delay in transportation. 28 ALR 503, 509 and 45 ALR 919.

8-815. (7870) **Consignor of valuables to declare their nature.** A common carrier of gold, silver, platina, or of precious stones, or of imitations thereof, in a manufactured or unmanufactured state; of timepieces of any description; of negotiable paper or other valuable writings; of pictures, glass, or chinaware; of statuary, silk, or laces; or of plated ware of any kind, is not liable for more than fifty dollars upon the loss or injury of any one package of such articles, unless he has notice, upon his receipt thereof, by mark upon the package or otherwise, of the nature of the freight; nor is such carrier liable upon any package carried for more than the value of the articles named in the receipt or the bill of lading.

History: En. Sec. 2913, Civ. C. 1895; re-en. Sec. 5356, Rev. C. 1907; re-en. Sec. 7870, R. C. M. 1921. Cal. Civ. C. Sec. 2200. Based on Field Civ. C. Sec. 1160.

Collateral References

Carriers⇐158 (2).

13 C.J.S. Carriers §§ 52, 102, 115.

Duty of consignee as to valuation of goods on reshipment to consignor. 16 ALR 2d 866.

8-816 to 8-818. (7871 to 7873) **Repealed—Chapter 264, Laws of 1963.**

Repeal

These sections (Secs. 2914 to 2916, Civ. C. 1895), relating to the responsibility of carriers for the delivery of freight, were repealed by Sec. 10-102, Ch. 264, Laws 1963. For present provisions, see sec. 87A-7-403.

8-819. (7874) **Sale of perishable property for freight.** If, from any cause other than want of ordinary care and diligence on his part, a common carrier is unable to deliver perishable property transported by him, and collect his charges thereon, he may cause the property to be sold in open market to satisfy his lien for freightage.

History: En. Sec. 2917, Civ. C. 1895; re-en. Sec. 5360, Rev. C. 1907; re-en. Sec. 7874, R. C. M. 1921. Cal. Civ. C. Sec. 2204.

Collateral References

Carriers⇐197.

13 C.J.S. Carriers § 324 et seq.

8-820. (7875) **Order of transmission of telegraphic messages.** A carrier of messages by telegraph or telephone must, if it is practicable, transmit every such message immediately upon its receipt. But if this is not practicable, and several messages accumulate upon his hands, he must transmit them in the following order:

1. Messages from public agents of the United States or of this state, on public business;

2. Messages giving information relating to the sickness or death of any person;

3. Messages intended in good faith for immediate publication in newspapers, and not for any secret use;

4. Other messages in the order in which they were received.

History: En. Sec. 2930, Civ. C. 1895; re-en. Sec. 5361, Rev. C. 1907; re-en. Sec. 7875, R. C. M. 1921. Cal. Civ. C. Sec. 2207. Based on Field Civ. C. Sec. 1164.

Injury Caused by Negligence

While a telegraph company is not an insurer of the speedy and accurate transmission of a paid message, it is engaged in the performance of a public service and is held to the exercise of ordinary care and diligence; it must, therefore, respond in damages for any injury caused by its negligence in the premises. Lahood v. Continental Telegraph Co., 52 M 313, 321, 157 P 639.

Collateral References

Telecommunications⊂⊃148.

86 C.J.S. Telegraphs, Telephone, Radio, and Television § 140.

8-821. (7876) **Order in other cases.** A common carrier of messages, otherwise than by telegraph or telephone, must transmit them in the order in which he receives them, except messages from agents of the United States or of this state, on public business, to which he must always give priority.

History: En. Sec. 2931, Civ. C. 1895; re-en. Sec. 5362, Rev. C. 1907; re-en. Sec. 7876, R. C. M. 1921. Cal. Civ. C. Sec. 2208. Based on Field Civ. C. Sec. 1165.

References

Lahood v. Continental Telegraph Co., 52 M 313, 322, 157 P 639.

Collateral References

Carriers⊂⊃77.

13 C.J.S. Carriers §§ 40, 60, 160.

8-822. (7877) **Damages when message is refused or postponed.** Every person whose message is refused or postponed, contrary to the provisions of this chapter, is entitled to recover from the carrier his actual damages, and fifty dollars in addition thereto.

History: En. Sec. 2932, Civ. C. 1895; re-en. Sec. 5363, Rev. C. 1907; re-en. Sec. 7877, R. C. M. 1921. Cal. Civ. C. Sec. 2209. Based on Field Civ. C. Sec. 1166.

Cross-Reference

Penalty for neglect or postponement of delivery, sec. 94-35-218.

Application of Statute

This section and sections 8-220 and 8-821 apply merely in cases of ordinary negligence, where the circumstances are not aggravated by fraud, malice, or oppression. Lahood v. Continental Telegraph Co., 52 M 313, 322, 157 P 639.

Stipulation as to Damages

A stipulation by a telegraph company, on one of its blanks, that it will not be answerable for damages or statutory penalties, if a claim is not made within a specified time, is void, under section 13-802, as against public policy, if it was intended as a cloak for fraud or crime. Lahood v. Continental Telegraph Co., 52 M 313, 322, 157 P 639.

Collateral References

Telecommunications⊂⊃178-183.

86 C.J.S. Telegraphs, Telephones, Radio, and Television §§ 200-247.

TITLE 9

CEMETERIES

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CHAPTER 1

CEMETERY ASSOCIATIONS—INCORPORATION OF

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9-101. (6469) **Formation of association—trustees.** Any number of persons residing in any county in the state of Montana, not less than sev-

en, who desire to form an association for the purpose of procuring and holding lands to be used exclusively for a cemetery or place of burial of the dead, may meet at such time and place as they, or a majority of them, agree upon, and appoint a chairman and secretary by a vote of the majority of the persons present at the meeting, and may proceed to form an association, by agreeing upon a corporate name by which the association shall be known, and by determining upon the number of trustees to manage the affairs of the association, which number shall not be less than three, nor more than nine; and thereupon they may proceed to elect, by ballot, the number of trustees so determined upon.

History: En. Sec. 1, Ch. 18, L. 1905; re-en. Sec. 4237, Rev. C. 1907; re-en. Sec. 6469, R. C. M. 1921. Cal. Civ. C. Secs. 608-616.

Collateral References

Cemeteries⇨5.
14 C.J.S. Cemeteries §§ 6-14.
14 Am. Jur. 2d 701, Cemeteries, § 5.

References

Forestvale Cemetery Assn. v. Helena Cemetery Assn., 62 M 52, 57, 203 P 359.

9-102. (6470) **Classification of trustees.** The chairman and secretary of such meeting shall, immediately after such election, divide the trustees by lot into three classes; those in the first class to hold their office for one year; those in the second class, two years; and those in the third class, three years; but the trustees of each class may be re-elected if they possess the qualifications hereinafter mentioned. Such meeting shall also determine on what day in each year the future annual election of trustees shall be held.

History: En. Sec. 2, Ch. 18, L. 1905; re-en. Sec. 4238, Rev. C. 1907; re-en. Sec. 6470, R. C. M. 1921.

9-103. (6471) **Articles of incorporation.** The chairman and secretary of such meeting shall, within five days after the holding of the same, make a written certificate, which shall state the names of the associates who attended such meeting, the corporate name of the association determined upon by a majority of the persons who met, the number of persons fixed upon to manage the concerns of the association, the names of the trustees chosen at the meeting and their classification, the day of the year fixed upon for the annual election of trustees, and the manner of their election. Such certificate shall be signed by the said chairman and secretary, and acknowledged by them before some person authorized to take acknowledgments within the state of Montana, and they shall cause such certificate so acknowledged to be recorded in the office of the county clerk and recorder of the county in which said meeting was held, and a certified copy of such certificate so recorded shall be filed with the secretary of state of the state of Montana, who shall thereupon issue his certificate therefor without charge.

History: En. Sec. 3, Ch. 18, L. 1905; re-en. Sec. 4239, Rev. C. 1907; re-en. Sec. 6471, R. C. M. 1921.

9-104. (6472) **Effect of filing certificate—powers of corporation—eminent domain.** Whenever such certificate is duly acknowledged and re-

corded and filed as provided in the last section, the association mentioned therein shall be deemed legally incorporated, and shall have the general powers and privileges of corporations, with the right to sue and be sued, and to continue perpetually, and in addition thereto such corporations shall have the right and power to take private property for public use, to be used exclusively for a cemetery or place of burial of the dead.

Such power of eminent domain to be exercised under the provisions of sections 93-9901 to 93-9926.

History: En. Sec. 4, Ch. 18, L. 1905; re-en. Sec. 4240, Rev. C. 1907; amd. Sec. 1, Ch. 99, L. 1911; re-en. Sec. 6472, R. C. M. 1921.

Land Owned by Cemetery Association

Land owned by a cemetery association organized for profit is private property, which may be taken by eminent domain for public cemetery purposes. Forestvale Cemetery Assn. v. Helena Cemetery Assn., 62 M 52, 57, 203 P 359.

9-105. (6473) **Trustees may enact bylaws.** The trustees of any association incorporated agreeably to the provisions of this act may enact bylaws for regulating the affairs of such corporation, not inconsistent with the laws of this state.

History: En. Sec. 5, Ch. 18, L. 1905; re-en. Sec. 4241, Rev. C. 1907; re-en. Sec. 6473, R. C. M. 1921.

9-106. (6474) **Vacancies in membership.** All vacancies occurring by death or otherwise in the membership of any cemetery association organized under this act shall be filled by a vote of the surviving or remaining associates named in the certificate of association. All persons so elected to fill any such vacancy shall be entitled to vote at the election of trustees, and be eligible to the office of trustee of said incorporation, and shall have and be entitled to the same rights, powers, and privileges as the original associates named in said certificate.

History: En. Sec. 6, Ch. 18, L. 1905; re-en. Sec. 4242, Rev. C. 1907; re-en. Sec. 6474, R. C. M. 1921.

9-107. (6475) **Powers and duties of trustees—officers.** The affairs and property of such association shall be managed by the trustees, a majority of whom shall form a board for the transaction of business. The trustees shall annually appoint from among their number a president, vice-president, secretary, and treasurer, who shall hold their offices during the pleasure of the board of trustees; and the trustees may require the treasurer to give security for the faithful performance of the duties of his office.

History: En. Sec. 7, Ch. 18, L. 1905; re-en. Sec. 4243, Rev. C. 1907; re-en. Sec. 6475, R. C. M. 1921.

9-108. (6476) **Secretary.** The secretary shall perform all the duties of a secretary of a corporation, and shall, in addition, keep a record of interments, in which he shall enter, as correctly and carefully as may be, the name, age, sex, nativity, and cause of death, with date of burial of every person interred in such cemetery, which facts he shall procure from such

friends or relatives of the deceased, or undertaker, as give order for such interment, at the time thereof, or, in case deceased is a pauper, a stranger, or criminal, from the coroner, county physician, overseer of the poor, or other public officer directing the burial of the same.

History: En. Sec. 8, Ch. 18, L. 1905; re-en. Sec. 4244, Rev. C. 1907; re-en. Sec. 6476, R. C. M. 1921.

9-109. (6477) **Register of interments.** Such register or record of interment shall be open to the inspection of the public; and the secretary of every cemetery association shall furnish to the health officers of any corporate town, or city or county within the state, when demanded by them, an accurate summary of all the interments during any particular year.

History: En. Sec. 9, Ch. 18, L. 1905; re-en. Sec. 4245, Rev. C. 1907; re-en. Sec. 6477, R. C. M. 1921.

9-110. (6478) **Penalty for failure to keep register.** Any secretary who neglects or refuses to carefully keep such register of burials and record all interments therein, as herein provided, shall be subject to a fine for such offense, not exceeding twenty-five dollars.

History: En. Sec. 10, Ch. 18, L. 1905; re-en. Sec. 4246, Rev. C. 1907; re-en. Sec. 6478, R. C. M. 1921.

9-111. (6479) **Association may take land by purchase or gift—use of personal property gifts.** Any association incorporated agreeably to the provisions of this act may take by purchase or gift, and hold, within the county in which the certificate of their incorporation is recorded, not exceeding three hundred and twenty (320) acres of land, to be held and occupied exclusively for a cemetery for the burial of the dead, and for purposes necessary or proper thereto; such land, or such portion thereof as may from time to time be required for that purpose, shall be surveyed and divided into lots of such size as the trustees may direct, with such avenues, alleys and walks as the said trustees deem proper; and a map of such survey shall be filed and recorded in the office of the county clerk and recorder of the county in which the lands lie, without any fees therefor. Such association may also take by gift and hold personal property, and may sell the same and apply the proceeds thereof to the care, maintenance and embellishment of said cemetery, but for no other purpose, and all real and personal estate which shall have been given or granted to any such association for the maintenance of any monument, the keeping in good order, or the embellishment of any lot or ground situated within the inclosure of such an association, shall remain forever to the uses for which the same shall have been given or granted, according to the true intent of the grantor. Any city or town in or near which a cemetery is maintained under the provisions of this act, may furnish water to be used within such cemetery and for its maintenance and beautification free of charge to such cemetery association if such city or town shall so elect.

History: En. Sec. 11, Ch. 18, L. 1905; re-en. Sec. 4247, Rev. C. 1907; re-en. Sec. 6479, R. C. M. 1921; amd. Sec. 1, Ch. 98, L. 1939; amd. Sec. 1, Ch. 78, L. 1947.

9-112. (6480) **Conveyance of land.** After such map is filed in the office of the county clerk and recorder, as aforesaid, the trustees may sell and convey the lots as designated on such map, upon terms, and subject to such conditions and restrictions, to be inserted in or annexed to the conveyances, as the said trustees shall prescribe. Every conveyance of any such lots shall be expressly for burial purposes, and no other, and shall be in the corporate name of the association, signed by the president and secretary thereof.

History: En. Sec. 12, Ch. 18, L. 1905; re-en. Sec. 4248, Rev. C. 1907; re-en. Sec. 6480, R. C. M. 1921.

9-113. (6481) **Annual election.** The annual election for trustees, to supply the place of those whose term of office expires, shall be holden on the day mentioned in the certificate of incorporation, and at such hour and place as the trustees direct. The trustees chosen at any election after the first shall hold their offices for three years, and until others are chosen to succeed them. Such election shall be by ballot, and every person who is the proprietor of a lot in the cemetery of the association, or, if there is more than one proprietor of any such lot, then such one of the proprietors as a majority of the joint proprietors shall designate to represent such lot, or any person who is named as an associate in said certificate, may vote at such election, and the persons receiving the highest number of votes given at such election shall be declared elected trustees.

History: En. Sec. 13, Ch. 18, L. 1905; re-en. Sec. 4249, Rev. C. 1907; re-en. Sec. 6481, R. C. M. 1921.

9-114. (6482) **Qualifications of trustees — notice of election.** In all elections after the first, the trustees shall be chosen from among the associates named in said certificate of incorporation, or their successors; and the said trustees shall have the power to fill any vacancy in their number occurring during the term of office for which any trustee was elected. Public notice of every annual election shall be given in such manner as the bylaws of the association prescribe.

History: En. Sec. 14, Ch. 18, L. 1905; re-en. Sec. 4250, Rev. C. 1907; re-en. Sec. 6482, R. C. M. 1921.

9-115. (6483) **Trustees may fix day for election.** If the annual election is not held on the day fixed in the certificate of incorporation, the trustees have the power to appoint another day, not more than sixty days thereafter, and shall give public notice of the time and place, at which time the election may be held with like effect as if holden on the day fixed in said certificate; and the terms of office of the trustees chosen at such election shall expire at the same time they would have done had they been chosen on the day fixed in the said certificate of incorporation.

History: En. Sec. 15, Ch. 18, L. 1905; re-en. Sec. 4251, Rev. C. 1907; re-en. Sec. 6483, R. C. M. 1921.

9-116. (6484) **Annual report.** The trustees at each annual meeting shall make a report, in writing, which report shall be signed by at least a

majority of the members of such board, and shall contain a statement of their doings and of the affairs of the association, and an account of the receipts and disbursements during the year preceding. Such report must be duly verified and filed in the office of the clerk of the district court. Such reports shall be noticed for hearing and heard in the same manner as reports of administrators in estates of deceased persons.

It is hereby made the duty of the county attorney of the county in which cemetery is situated to act, without charge, as the legal advisor of all officers of a cemetery association and to prepare and present any and all reports required to be made by such officers.

History: En. Sec. 16, Ch. 18, L. 1905; re-en. Sec. 4252, Rev. C. 1907; re-en. Sec. 6484, R. C. M. 1921; amd. Sec. 2, Ch. 98, L. 1939.

9-117. (6485) **Funds—to what purposes to be applied.** The proceeds arising from the sale of lots in such cemetery shall be applied to the payment of any debts incurred by the cemetery association in the purchase of cemetery grounds and property; in fencing, improving, and embellishing such grounds and avenues leading thereto; the erection, conduct, repair, or preservation of any structure to be used as a crematory, or the creation, maintenance, and operation of a department for the interment of the dead, and in defraying the necessary expenses in the management and care thereof, and for no other purposes.

History: En. Sec. 17, Ch. 18, L. 1905; re-en. Sec. 4253, Rev. C. 1907; amd. Sec. 1, Ch. 65, L. 1919; re-en. Sec. 6485, R. C. M. 1921.

9-118. (6486) **Exemption from taxation and execution.** The cemetery lands and property of any association formed pursuant to this act are exempt from all public taxes and assessments, and not liable to be sold on execution, or applied in payment of debts of any individual proprietors; but the proprietors of lots in such cemetery, their heirs or legal representatives may hold the same exempt therefrom, so long as the same remain appropriated to the use of a cemetery, and during that time no street or road shall be laid through such cemetery, or any part of the lands held by such association, for the purpose aforesaid, without the consent of the trustees of such association.

History: En. Sec. 18, Ch. 18, L. 1905; re-en. Sec. 4254, Rev. C. 1907; re-en. Sec. 6486, R. C. M. 1921.

Collateral References

Taxation⇐245.

84 C.J.S. Taxation § 292.

9-119. (6487) **Transfer of lots.** Whenever the lands of any such association are laid out in lots, and such lots or any of them are transferred to individual proprietors, and after there has been an interment in any lot so transferred, such lot from the time of such interment shall forever thereafter be inalienable, and shall, upon the death of the proprietor, descend to the heirs of such proprietor, forever; but any one or more of such heirs may release to any other of the said heirs his or their interest in the same; a copy of such release shall be filed with the secretary of said association, or with the county clerk and recorder of the county within which said lot shall be situated. The body of any deceased person shall not be interred in such lot unless it is the body of a person having, at the time of such de-

cease, an interest in such lot, or of a relative of some person having such interest, or the wife of such person, or the husband of such person, or the relative of such husband or wife, except by consent of all persons having an interest in such lot; provided, that the person or persons who shall be invested with the title to any such lot or lots, or part thereof, may, at any time, sell, convey, and release any such lots or parts thereof to the cemetery association maintaining the cemetery in which such lots are situate; a copy of the instruments of such conveyance to be filed as above provided in case of releases from one heir to another. And such cemetery association shall have power to use any funds under its control for such purposes, and shall hold and shall have power to convey any such lots or parts thereof to other purchases, in the same manner and with the same effect as it holds and can convey any other of its cemetery lots. But this proviso shall not allow or authorize the conveyance by persons invested with the title thereto, to such association, of any piece of ground in which the body of any deceased person theretofore there lawfully interred shall actually remain interred at the time of such attempted conveyance.

History: En. Sec. 19, Ch. 18, L. 1905; re-en. Sec. 4255, Rev. C. 1907; re-en. Sec. 6487, R. C. M. 1921.

Collateral References

Cemeteries⇨15.

14 C.J.S., Cemeteries § 27.

Property rights, generally, 14 Am. Jur. 2d 732, Cemeteries, §§ 25-30.

Rights and remedies as between cotenants of cemetery lots respecting burials therein. 10 ALR 2d 219.

9-120. (6488) **Permanent improvement fund.** Any association formed under the provisions of this act, or any corporation heretofore formed under the laws of this state, which shall have established and be maintaining a cemetery, shall provide, in the manner set forth in this chapter, for the establishment and maintenance of a permanent fund, the income of which shall be devoted to the care, maintenance, and improvement of such cemetery, which fund shall be known as the "permanent care and improvement fund" of such cemetery association.

History: En. Sec. 20, Ch. 18, L. 1905; re-en. Sec. 4256, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1909; re-en. Sec. 6488, R. C. M. 1921.

9-121. (6489) **Trustee or trustees of funds to be appointed by district court.** Whenever moneys to the amount of one hundred dollars ($100.00) shall have been received by such corporation, or association, heretofore or hereafter formed, such a fund, either from the sale of lots or from direct payments of such corporation or association toward such a fund by lot owners, or otherwise, the trustees of such association shall immediately make application to the judge of the district court for the judicial district in which the cemetery for which such trust fund exists for the appointment of a trustee or of a board of trustees of such fund and the judge of such court shall thereupon appoint a trustee or a board of trustees from a list submitted to him by the trustees of such association. Such trustee or such board shall consist of not less than one (1) nor more than five (5) persons, the exact number to rest in the discretion of the said trustees of said association. Such trustee or the members of such board of trustees of such funds must be citizens and freeholders of the state of Montana during all

the time they exercise the powers of such trust. Upon the election, appointment, and qualification, as hereinafter provided, of the said trustees of such fund, all of the title to the funds included in said trust, and all of the rights, powers, authorities, franchises, and trusts of whatsoever thereunto appertaining, shall at once vest in him or them; or, in case of the failure of any of those so chosen and appointed, to qualify within thirty (30) days after their appointment, then the same shall vest in the one or more who shall qualify. In case of the failure of any of those so chosen and appointed so to qualify within such time, then a vacancy shall exist and the judge of said district court shall forthwith appoint from a list submitted to him by the trustees of such association some person possessing the above qualifications to fill vacancy or vacancies in said board of trustees of such fund; provided, however, that trustees of such fund, heretofore appointed by such cemetery associations, or district courts, shall continue to hold their office as such trustees until terminated in one of the manners in this act provided.

The board of trustees shall also have the power and authority to nominate any bank which is authorized to act as a trust company in Montana under state or federal law, to be trustee of such trust fund. And in that event the district court shall make appointment of such nominee which shall serve in such capacity without bond, but shall be required to make all reports and discharge all the duties and obligations required of individual trustees.

History: En. Sec. 21, Ch. 18, L. 1905; re-en. Sec. 1990, Rev. C. 1907; re-en. Sec. 2, Ch. 128, L. 1909; re-en. Sec. 6489, R. C. M. 1921; amd. Sec. 1, Ch. 68, L. 1925; amd. Sec. 3, Ch. 98, L. 1939.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

9-122. (6490) **Tenure of office of trustees.** The tenure of office of the trustee or trustees of such fund shall be for the term of three (3) years, unless they permanently remove from the state of Montana, or are removed from office by the judge of said district court for good cause shown or their tenure is otherwise terminated as in this act provided.

History: En. Sec. 22, Ch. 18, L. 1905; re-en. Sec. 4258, Rev. C. 1907; re-en. Sec. 6490, R. C. M. 1921; amd. Sec. 2, Ch. 68, L. 1925; amd. Sec. 4, Ch. 98, L. 1939.

9-123. (6491) **Bond of trustee or trustees—deposit with county treasurer.** (a) Before exercising, or having any of the powers, duties, rights, titles, authorities, or franchises appertaining to such trust or to such trusteeship, each person chosen to be a trustee of such fund shall give to the cemetery association for which the trust is maintained, a bond in a sum equaling at least one and one-third (1 1/3) times the value of the property on hand at the time of giving such bond, with good and sufficient sureties thereto, who shall justify in the aggregate in at least double the amount of such bond, the same to be conditioned for the due and faithful performance of his trust until July first of the next even-numbered year after the year in which such bond shall be given, and until such trustee shall give a new bond as hereinafter provided. Upon the first day of July in each even-numbered year, each trustee shall give a new bond conditioned in

the same way, the amount thereof to be determined by the same rule, and with sureties as above provided. Such bonds shall all be approved by a judge of the district court for the judicial district in which the cemetery for such trust exists, or some part thereof shall be situate, and shall be filed with the clerk of the district court of the county in which such cemetery is located. Any failure so to renew bonds within thirty (30) days after the time hereinbefore provided shall be a sufficient ground for removal of any trustee within the discretion of the district court.

The value of the property on hand may be reduced for the purpose of fixing the amount of the bond in an amount equal to the value of the money, bonds, and securities which the trustee or trustees of the permanent care and improvement fund may elect to, and do deposit with the county treasurer as hereinafter provided.

(b) The trustee or trustees of such fund may deposit such money, bonds and securities as he or they see fit with the county treasurer of the county in which said cemetery or some part thereof is situated for safekeeping, and it is the duty of the county treasurer to receive and safely keep all such moneys, bonds and securities, and pay them out, or deliver them up, or any part thereof, upon the order of such trustee or a majority of the trustees, when countersigned by a judge of said judicial district, and not otherwise, and to keep an account with such trustee or trustees of all such transactions; and for the safekeeping and payment and delivery of all such moneys, bonds and securities, as herein provided, the said treasurer and his sureties are liable upon his official bond.

History: En. Sec. 23, Ch. 18, L. 1905; re-en. Sec. 4259, Rev. C. 1907; re-en. Sec. 6491, R. C. M. 1921; amd. Sec. 5, Ch. 98, L. 1939; amd. Sec. 1, Ch. 12, L. 1947.

9-124. (6492) **Vacancies, how filled.** In the case of the death, resignation, disability or removal of any member or members of said board of trustees of said fund the judge of said district court shall forthwith appoint a trustee or trustees to fill such vacancy or vacancies, in the same manner as above provided in the case of an original vacancy.

History: En. Sec. 24, Ch. 18, L. 1905; re-en. Sec. 4260, Rev. C. 1907; re-en. Sec. 6492, R. C. M. 1921; amd. Sec. 3, Ch. 68, L. 1925.

9-125. (6493) **Powers of survivors.** In case of the death, resignation, disability, or removal of any one or more of the trustees of such fund, all the rights, titles, powers, authorities, franchises, and trusts whatsoever, existing in such trustee at the time of such death, resignation, disability, or removal, shall at once, without further act or conveyance, vest in the survivor or survivors until the vacancy or vacancies so occasioned shall be filled, when the same shall in the same manner vest in the board as so reconstituted. All newly appointed trustees shall at once, upon qualification, succeed to an equal share in all the rights, titles, powers, authorities, franchises, and trusts belonging to such board; and the same shall always be vested in the members of such board as actually constituted.

History: En. Sec. 25, Ch. 18, L. 1905; re-en. Sec. 4261, Rev. C. 1907; re-en. Sec. 6493, R. C. M. 1921.

9-126. (6494) **Title to funds vest in court until appointment of trustees—application by persons other than trustees of association—accounting.** In the case of the failure of the trustees of such an association to make application to the judge of said district court for the appointment of a board of trustees of such fund, as provided in section 9-121, or in the case of the death, removal, resignation, or disability of all of the members of such board, the said rights, titles, interests, authorities, powers, franchises and trusts, until the appointment and qualification of a new board of trustees of such fund shall vest in the district court of the county in which such cemetery, or the greater part thereof, shall be situated. In such cases such trustee or such board of trustees of such fund shall be appointed by the district court of said county upon application of any person interested and upon notice of other persons interested, as the judge of said court may order. The trustee or trustees appointed by the judge of said court under the provisions of this section, shall have the same rights, powers, authorities, and franchises as the trustee or trustees appointed under any other sections of this act. Such trustee or such board of trustees must annually, or oftener if so required by order of such court, file in the office of the clerk of the district court of the county where such cemetery is situated, a duly verified account showing a detailed statement of all moneys collected, of all securities on hand, together with all moneys disbursed during the preceding year. Any interested party may apply to the district court for an order requiring such trustee or such board of trustees to make such an accounting at any time. Any owner of an interest in any lot in the cemetery cared for by such trust, any trustee of the cemetery association, and any trustee of the said trust fund, shall have the right to make any application to the court provided for in this chapter.

History: En. Sec. 26, Ch. 18, L. 1905; re-en. Sec. 4262, Rev. C. 1907; amd. Sec. 3, Ch. 128, L. 1909; re-en. Sec. 6494, R. C. M. 1921; amd. Sec. 4, Ch. 68, L. 1925; amd. Sec. 6, Ch. 98, L. 1939.

9-127. (6495) **Recording appointments of trustee or trustees.** All instruments of appointment of a trustee or of a board of trustees of such funds shall be recorded with the secretary of the association establishing the fund and shall also be filed in the office of the clerk of the district court in the county in which such association is located.

History: En. Sec. 27, Ch. 18, L. 1905; re-en. Sec. 4263, Rev. C. 1907; re-en. Sec. 6495, R. C. M. 1921; amd. Sec. 7, Ch. 98, L. 1939.

9-128. (6496) **Transfer of funds.** From and after the passage and approval of this act, the trustees of such cemetery association as are mentioned in section 9-121 shall provide by resolution, spread upon the minutes of such association, for the transfer to the trustees of such "permanent care and improvement fund," of not less than fifteen nor more than forty per cent of the moneys received from the sale of cemetery lots by said association, together with all moneys theretofore or thereafter received from the owners of lots for the care of such lots; and such transfer of any such funds then on hand shall then and there be made; such transfers shall be made thereafter quarterly, upon the first days of January, April, July, and October of each year, to the trustees of such fund. If at

any time there shall remain in the hands of such association unexpended money, over and above the liabilities of the association, the board of trustees of such association may, by a two-thirds vote, appropriate the whole or any portion of such unexpended moneys to such "permanent care and improvement fund"; provided, that such fund (exclusive of such portion thereof as may have been paid in by owners of lots for the care of lots) shall never in any case be allowed to exceed the sum of five thousand dollars per acre of the cemetery to be cared for therewith; and when such fund shall reach such amount, all appropriations and payments thereto shall cease.

History: En. Sec. 28, Ch. 18, L. 1905; re-en. Sec. 4264, Rev. C. 1907; amd. Sec. 4, Ch. 128, L. 1909; re-en. Sec. 6496, R. C. M. 1921.

9-129. (6497) **Principal of fund to be reserved.** The principal of such fund shall in all cases remain intact and inviolate. But the trustees of such fund shall, on the first of January and first of July in each year, turn over to the treasurer of such association all accrued income arising from such fund, and the receipt of such treasurer therefor shall be a sufficient voucher in the hands of such trustees.

History: En. Sec. 29, Ch. 18, L. 1905; re-en. Sec. 4265, Rev. C. 1907; re-en. Sec. 6497, R. C. M. 1921.

9-130. (6498) **Use of income of fund.** The income of that portion of such fund, received from the sales of lots, shall be used, in the discretion of the trustees of such association, solely for the care, maintenance, and improvement of such cemetery, its grounds, roads, walks, and avenues leading thereto, except as herein provided. The income from such portion of such funds as shall have been paid in by lot owners for the care of specific lots shall be segregated from the other portion, each lot being credited with its respective income, and shall be used solely for the care of such lots, respectively. In the event of any portion of the income so paid ever remaining unexpended for such purposes, for one year after its being so paid over to the treasurer of such association, it shall be returned to the trustees of such fund by said treasurer, and become a part of the principal. Hereafter all cemetery corporations shall distinctly specify in all conveyances of lots therein the percentage of the price received therefor, to be transferred under the provisions of this chapter to the "permanent care and improvement fund" of such corporation, and also such further sum, if any there be, paid by the purchaser for the permanent care of the specific lot or lots thereby conveyed, so to be transferred as hereinbefore provided.

History: En. Sec. 30, Ch. 18, L. 1905; re-en. Sec. 4266, Rev. C. 1907; amd. Sec. 5, Ch. 128, L. 1909; re-en. Sec. 6498, R. C. M. 1921.

9-131. (6499) **Investment of fund.** The principal of such fund may be invested in the way in which trust funds are permitted to be invested in the state of Montana and not otherwise; provided that each investment made by the trustee or by the board of trustees shall be subject to the ap-

proval of the board of trustees of the cemetery association and also by the district judge of the county in which the cemetery is situated.

History: En. Sec. 31, Ch. 18, L. 1905; 6499, R. C. M. 1921; amd. Sec. 8, Ch. 98, re-en. Sec. 4267, Rev. C. 1907; re-en. Sec. L. 1939.

9-132. (6500) **Compensation of trustees.** The trustee or the members of the board of trustees of such permanent care and improvement fund shall receive such compensation as may be agreed upon between such trustee or between such board of trustees of such permanent care and improvement fund on the one hand and the board of trustees of the cemetery association on the other, provided that the total compensation of such trustee or of the entire board of trustees shall in no case exceed the sum of one hundred dollars ($100.00) per annum. The fees of such trustee or of the members of the board of trustees shall be paid out of the general fund of the cemetery association until such trust fund shall reach ten thousand dollars ($10,000.00) and thereafter the same shall be paid out of the income of such fund.

History: En. Sec. 32, Ch. 18, L. 1905; 6500, R. C. M. 1921; amd. Sec. 9, Ch. 98, re-en. Sec. 4268, Rev. C. 1907; re-en. Sec. L. 1939.

9-133. (6501) **Secretary of board.** The secretary of the cemetery association shall act as secretary of such trustee or as secretary of such board of trustees of such fund and shall keep a full record of their proceedings.

History: En. Sec. 33, Ch. 18, L. 1905; 6501, R. C. M. 1921; amd. Sec. 10, Ch. 98, re-en. Sec. 4269, Rev. C. 1907; re-en. Sec. L. 1939.

9-134. (6502) **Annual report.** The trustee or the board of trustees of such fund shall annually, on the first day of January, make their report of the condition of such trust fund to the trustees of the cemetery association, and also to the district court as hereinbefore provided. Such reports shall always be kept by the secretary of such association, and by the clerk of the district court, and be open to the inspection of any person owning an interest in any lot in the cemetery cared for by such fund.

History: En. Sec. 34, Ch. 18, L. 1905; 6502, R. C. M. 1921; amd. Sec. 11, Ch. 98, re-en. Sec. 4270, Rev. C. 1907; re-en. Sec. L. 1939.

CHAPTER 2

PUBLIC CEMETERY DISTRICT ACT

Section 9-201. Public Cemetery District Act.
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9-201. Public Cemetery District Act. There is hereby deemed and declared a Public Cemetery District Act for the state of Montana. A cemetery district may contain the entire territory embraced within a county or any portion or subdivision thereof.

History: En. Sec. 1, Ch. 221, L. 1943; amd. Sec. 1, Ch. 16, L. 1945.

9-202. Petition to board of county commissioners. Whenever a petition, signed by not less than twenty (20%) per cent of the citizens who are owners of land located within a proposed cemetery district, whose names appear as such owners of land upon the last completed assessment roll of the county in which said proposed district is situated, which petition shall definitely describe the boundaries of the proposed district and request that the territory within said boundaries be organized into a public cemetery district, the petition shall be presented to the board of county commissioners of the county in which the proposed district is situated, at a regular or special meeting of said board. The said board of county commissioners, by resolution, shall fix a time for the hearing of said petition at not less than two (2) nor more than five (5) weeks from the time of presentation thereof, and shall cause notice to be given of the time and place of said hearing by publication as prescribed by law, for not less than two (2) weeks prior to the time of said hearing. Said notice shall state that any person residing in or owning property within said proposed district or within any existing cemetery district, any part of the territory of which is described in said petition, may appear before said board at the hearing and show cause why the said district should not be created or the proposed boundaries changed.

History: En. Sec. 2, Ch. 221, L. 1943; amd. Sec. 2, Ch. 16, L. 1945.

Collateral References
Cemeteries⇐1, 3, 4.
14 C.J.S. Cemeteries § 2.

9-203. Hearing. At the time fixed for said hearing, the board shall determine whether or not it complies with the requirements hereinbefore set forth and whether or not the notice required herein has been published as required, and must hear all competent and relevant testimony offered in support of or in opposition thereto. Said hearing may be adjourned from time to time for the determination of said facts, not to exceed two (2) weeks in all.

History: En. Sec. 3, Ch. 221, L. 1943; amd. Sec. 3, Ch. 16, L. 1945.

9-204. Final hearing. If the board of county commissioners shall determine that the petitioners have complied with the requirements herein set forth and that the notice required has been published, it shall thereupon proceed to a final hearing of the matter. Said board shall make such changes in the boundaries of the proposed district as it may deem advisable and shall define and establish such boundaries, as described in the petition and shall call an election.

History: En. Sec. 4, Ch. 221, L. 1943; amd. Sec. 4, Ch. 16, L. 1945.

9-205. Order of board as respects election. The board, must in its order, designate whether or not a special election shall be held, or whether the matter shall be determined at the next general election. If a special election is ordered, the board must, in its order, specify the time and place for such election, the voting place, and shall in said order appoint and designate judges and clerks therefor. The election shall be held in all respects as nearly as practicable in conformity with the general election laws: and provided, further, that the polls shall be open from eight (8) o'clock A. M. to six (6) P. M., on the day appointed for such election. At such election, the ballots must contain the words "Cemetery District, Yes" and "Cemetery District, No." The judges of the election shall certify to the board of county commissioners the results of said election.

History: En. Sec. 5, Ch. 221, L. 1943; amd. Sec. 5, Ch. 16, L. 1945.

9-206. Favorable vote—commissioners to organize district. In the event that a majority of the votes cast are in favor of the formation of said cemetery district, the board of county commissioners shall proceed with the organization thereof as herein specified.

History: En. Sec. 6, Ch. 221, L. 1943; amd. Sec. 6, Ch. 16, L. 1945.

9-207. Government of district — appointment and terms of trustees. Said cemetery district shall be governed and managed by three (3) trustees, appointed by the board of county commissioners. The trustees shall be appointed from the freeholders residing within said district for terms of one (1), two (2) and three (3) years respectively, and until their successors shall be appointed and qualified. Annually thereafter the board of

county commissioners shall appoint one trustee for a term of three (3) years or until his successor shall be appointed and qualified. The trustees at their first meeting shall adopt bylaws for the government and management of the district. They shall serve without pay.

History: En. Sec. 7, Ch. 221, L. 1943; amd. Sec. 7, Ch. 16, L. 1945.

Collateral References

Municipal Corporations⇐196.
62 C.J.S. Municipal Corporations § 597.

9-208. Powers of district. Said district may maintain a cemetery or cemeteries within said district; may hold title to property by grant, gift, devise, lease, or any other method; and perform all acts necessary or proper for the carrying out of the purposes of this act, including the selling or leasing of burial lots.

History: En. Sec. 8, Ch. 221, L. 1943; amd. Sec. 8, Ch. 16, L. 1945.

9-209. Budget and tax levy. The board of cemetery trustees shall annually present a budget to the board of county commissioners at the regular budget meetings as prescribed by law. The board of county commissioners must annually, at the time of levying county taxes, fix and levy upon all property within said cemetery district, sufficient to raise the amount certified by the board of cemetery trustees to be raised by a tax on the property of said district. The tax so levied shall not exceed two (2) mills on each dollar of taxable valuation on the property of said district. Expenditures made, liabilities incurred, or warrants issued by or in behalf of any cemetery district in excess of the annual budget presented to the board of county commissioners as provided herein and the amount appropriated for and authorized to be expended for each item in the budget shall not be a liability of the cemetery district. In so far as the same can be made applicable, the county budget system, sections 16-1901 to 16-1911, shall govern the operation of cemetery districts created under this act.

History: En. Sec. 9, Ch. 221, L. 1943; amd. Sec. 9, Ch. 16, L. 1945; amd. Sec. 1, Ch. 93, L. 1951; amd. Sec. 1, Ch. 4, L. 1955.

Collateral References

Cemeteries⇐1, 3, 4; Counties⇐192.
14 C.J.S. Cemeteries § 2; 20 C.J.S. Counties § 281.

9-209.1. Disbursement of tax proceeds. The proceeds of taxes collected by the county treasurer for the public cemetery fund shall be disbursed to the various cemetery districts upon the submission of a claim by said cemetery districts to the board of county commissioners for their pro-rata share of the proceeds of the taxes collected. Upon approval of said claim by the board of county commissioners the county clerk shall issue a trust fund warrant drawn upon the public cemetery fund and payable to each claimant.

History: En. Sec. 1, Ch. 94, L. 1951.

9-209.2. Validating act. All warrants heretofore issued by any cemetery district for services actually rendered or goods, wares, merchandise or material actually furnished to said cemetery district are hereby validated, ratified, approved and confirmed, notwithstanding any lack of pow-

er of such cemetery district to authorize or issue such warrants by reason of noncompliance with any budget act or their being in excess of any cemetery district budget or because of failure to include provision for the same in any cemetery district budget or otherwise and said warrants so issued for value received by said cemetery district shall be binding, legal, valid and enforceable obligations of such cemetery district.

History: En. Sec. 2, Ch. 4, L. 1955.

9-209.3. Payment of validated warrants. All cemetery district warrants validated, ratified, approved and confirmed by the provisions of this act shall be paid by the cemetery district which issued the same from any funds which the cemetery district may have on hand which are not appropriated for other purposes. Any such cemetery district is also authorized and directed to make provision for the payment of said warrants by including in its budget each year in which such warrants remain outstanding an item providing for the payment of such warrants as can be paid within the proceeds of the two (2) mill maximum levy on each dollar of taxable valuation of the property of said district specified in section 9-209, taking into consideration other income of the cemetery district and after having provided for the other budget requirements submitted by the board of cemetery trustees to the board of county commissioners and such maximum two (2) mill levy shall be made annually until said warrants are paid, provided, that no interest or other charges for the use of the money represented by said warrants shall be paid by the cemetery district. All cemetery district warrants validated, ratified, approved and confirmed by the provisions of this act shall be listed by the cemetery district having issued the same in the order in which they were issued by said cemetery district and the warrants shall be paid in the order in which they were issued as funds become available for the payment thereof under the provisions of this act.

History: En. Sec. 3, Ch. 4, L. 1955.

9-210. Regulations. The trustees shall make proper rules and regulations for the management of the cemeteries. The procedure of the collecting of the tax and the distribution of the funds shall be in accordance with the existing laws of the state of Montana.

History: En. Sec. 10, Ch. 221, L. 1943;
amd. Sec. 10, Ch. 16, L. 1945.

9-211. Withdrawal of portion of district, petition for. Any portion of a public cemetery district may be withdrawn therefrom as in this section provided, upon receipt of a petition signed by fifty (50) or more freeholders residing in, or owning property within the portion desired to be withdrawn by any public cemetery district or by a majority of such freeholders, if there are less than one hundred (100) residing within the portion sought to be withdrawn, on the grounds that such portion will not be benefited by remaining in said district. The board of county commissioners shall fix a time for the hearing of such withdrawal petition which shall not be more than sixty (60) days after the receipt thereof. The said board

shall, at least thirty (30) days prior to the time so fixed, publish a notice of such hearing for two (2) issues as provided by law.

History: En. Sec. 11, Ch. 221, L. 1943; amd. Sec. 11, Ch. 16, L. 1945.

9-212. Hearing. Any person interested may appear at said hearing and present objections to the withdrawal of said portion from said district. The board shall consider all objections, pass upon the merits thereof and make an order in accordance therewith. This order is subject to review by any court of competent jurisdiction.

History: En. Sec. 12, Ch. 221, L. 1943; amd. Sec. 12, Ch. 16, L. 1945.

9-213. Alteration of boundaries. The boundaries of any such public cemetery district may be altered and outlying districts be annexed thereto in the following manner: A petition signed by fifty (50) or more freeholders within the territory proposed to be annexed, or by a majority of such freeholders if there are less than one hundred (100) residing within the portion proposed to be annexed, designating the boundaries of such contiguous territory proposed to be annexed and asking that it be annexed to said public cemetery district, shall be presented to the board of county commissioners of the county in which said public cemetery district is situated.

History: En. Sec. 13, Ch. 221, L. 1943; amd. Sec. 13, Ch. 16, L. 1945.

Collateral References
Cemeteries⇨7-9.
14 C.J.S. Cemeteries § 15.

9-214. Notice, publication of. At the first regular meeting after the presentation of said petition, said board of county commissioners shall cause notice of said petition to be published according to law for two (2) weeks prior to the date to be fixed by said board for the hearing of said petition. Upon the date fixed for such hearing or continuance thereof said board shall take up and consider said petition and any objections which may be filed to the inclusion of any property in said district.

History: En. Sec. 14, Ch. 221, L. 1943; amd. Sec. 14, Ch. 16, L. 1945.

9-215. Power of county commissioners. Said board of county commissioners shall have the power by order entered on its minutes to grant said petition either in whole or in part, and by order entered on its minutes to alter the boundaries of said public cemetery district and to annex thereto, all, or such portion of said territory described in said petition as will be benefited thereby. This territory shall become and be a part of such public cemetery district and shall be taxed, together with the remainder of said district, for all taxes to be thereafter levied by said board of county commissioners for the operation and maintenance of said public cemetery district.

History: En. Sec. 15, Ch. 221, L. 1943; amd. Sec. 15, Ch. 16, L. 1945.

9-216. Permanent care and improvement fund—public cemetery district to provide for. Any public cemetery district formed under the

provisions of sections 9-201 et seq., which shall have established and be maintaining a cemetery, shall provide, in the manner set forth in this chapter, for the establishment and maintenance of a permanent fund, the income of which shall be devoted to the care, maintenance, and improvement of such cemetery, which fund shall be known as the "permanent care and improvement fund" of such public cemetery district.

History: En. Sec. 1, Ch. 165, L. 1955.

Collateral References

Cemeteries⇐5.
14 C.J.S. Cemeteries § 12.

9-217. Trustees of fund—appointment—qualifications—bank as trustee. Whenever moneys to the amount of one hundred dollars ($100.00) shall have been received by such public cemetery district, heretofore or hereafter formed, such a fund, either from the sale of lots or from direct payments of such public cemetery district toward such a fund by lot owners, the trustees of such public cemetery district shall immediately make application to the judge of the district court for the judicial district in which the cemetery for which such trust fund exists for the appointment of a trustee or of a board of trustees of such fund and the judge of such court shall thereupon appoint a trustee or a board of trustees from a list submitted to him by the trustees of such public cemetery district. Such trustee or such board shall consist of not less than one (1) nor more than five (5) persons, the exact number to rest in the discretion of the said trustees of said public cemetery district. Such trustee or the members of such board of trustees of such funds must be citizens and freeholders of the state of Montana during all the time they exercise the powers of such trust. Upon the election, appointment, and qualification, as hereinafter provided, of the said trustees of such fund, all of the title to the funds included in said trust, and all of the rights, powers, authorities, franchises, and trusts of whatsoever thereunto appertaining, shall at once vest in him or them; or, in case of the failure of any of those so chosen and appointed, to qualify within thirty (30) days after their appointment, then the same shall vest in the one or more who shall qualify. In case of the failure of any of those so chosen and appointed so to qualify within such time, then a vacancy shall exist and the judge of said district court shall forthwith appoint from a list submitted to him by the trustees of such public cemetery district some person possessing the above qualifications to fill vacancy or vacancies in said board of trustees of such fund; provided, however, that trustees of such fund, heretofore appointed by such public cemetery district, or district courts, shall continue to hold their office as such trustees until terminated in one of the manners in this act provided.

The board of trustees shall also have the power and authority to nominate any bank which is authorized to act as a trust company in Montana under state or federal law, to be trustee of such trust fund. And in that event the district court shall make appointment of such nominee which shall serve in such capacity without bond, but shall be required to make all reports and discharge all the duties and obligations required of individual trustees.

History: En. Sec. 2, Ch. 165, L. 1955.

9-218. Tenure of office. The tenure of office of the trustee or trustees of such fund shall be for the term of three (3) years, unless they permanently remove from the state of Montana, or are removed from office by the judge of said district court for good cause shown, or their tenure is otherwise terminated as in this act provided.

History: En. Sec. 3, Ch. 165, L. 1955.

9-219. Bond of trustees — amount — conditions — new bonds—approval by court—filing—deposits with county treasurer—expenditures. Before exercising, or having any of the powers, duties, rights, titles, authorities, or franchises appertaining to such trust or to such trusteeship, each person chosen to be a trustee of such fund shall give to the public cemetery district for which the trust is maintained, a bond in a sum equaling at least one and one-third (1 1/3) times the value of the property on hand at the time of giving such bond, with good and sufficient sureties thereto, who shall justify in the aggregate in at least double the amount of such bond, the same to be conditioned for the due and faithful performance of his trust until July first of the next even-numbered year after the year in which such bond shall be given, and until such trustee shall give a new bond as hereinafter provided. Upon the first day of July in each even-numbered year, each trustee shall give a new bond conditioned in the same way, the amount thereof to be determined by the same rule, and with sureties as above provided. Such bonds shall all be approved by a judge of the district court for the judicial district in which the cemetery for such trust exists, or some part thereof shall be situate, and shall be filed with the clerk of the district court of the county in which such cemetery is located. Any failure so to renew bonds within thirty (30) days after the time hereinbefore provided shall be a sufficient ground for the removal of any trustee within the discretion of the district court.

The value of the property on hand may be reduced for the purpose of fixing the amount of the bond in an amount equal to the value of the money, bonds, and securities which the trustee or trustees of the permanent care and improvement fund may elect to, and do deposit with the county treasurer as hereinafter provided.

The trustee or trustees of such fund may deposit such money, bonds and securities as he or they see fit with the county treasurer of the county in which said cemetery or some part thereof is situated for safekeeping, and it is the duty of the county treasurer to receive and safely keep all such moneys, bonds and securities, and pay them out, or deliver them up, or any part thereof, upon the order of such trustee or a majority of the trustees, when countersigned by a judge of said judicial district, and not otherwise, and to keep an account with such trustee or trustees of all such transactions; and for the safekeeping and payment and delivery of all such moneys, bonds and securities, as herein provided, the said treasurer and his sureties are liable upon his official bond.

History: En. Sec. 4, Ch. 165, L. 1955.

9-220. Vacancy—filling. In the case of the death, resignation, disability, or removal of any member or members of said board of trustees of

said fund the judge of said district court shall forthwith appoint a trustee or trustees to fill such vacancy or vacancies, in the same manner as above provided in the case of an original vacancy.

History: En. Sec. 5, Ch. 165, L. 1955.

9-221. Vesting of powers and duties in new trustees. In case of the death, resignation, disability, or removal of any one or more of the trustees of such fund, all the rights, titles, powers, authorities, franchises, and trusts whatsoever, existing in such trustee at the time of such death, resignation, disability or removal, shall at once, without further act or conveyance, vest in the survivor or survivors until the vacancy or vacancies so occasioned shall be filled, when the same shall in the same manner vest in the board as so reconstituted. All newly appointed trustees shall at once, upon qualification, succeed to an equal share in all the rights, titles, powers, authorities, franchises, and trusts belonging to such board; and the same shall always be vested in the members of such board as actually constituted.

History: En. Sec. 6, Ch. 165, L. 1955.

9-222. Failure of district to make application for trustees or disability of all members of board of trustees—vesting of interest, powers and duties with district court—appointment of board upon application—accounting. In the case of the failure of the trustees of such public cemetery district to make application to the judge of said district court for the appointment of a board of trustees of such fund, as provided in section 9-217, or in the case of the death, removal, resignation or disability of all the members of such board, the said rights, titles, interests, authorities, powers, franchises and trusts, until the appointment and qualification of a new board of trustees of such fund shall vest in the district court of the county in which such cemetery or the greater part thereof, shall be situated. In such cases such trustee or such board of trustees of such fund shall be appointed by the district court of said county upon application of any person interested and upon notice of other persons interested, as the judge of said court may order. The trustee or trustees appointed by the judge of said court under the provisions of this section, shall have the same rights, powers, authorities, and franchises as the trustee or trustees appointed under any other sections of this act. Such trustee or such board of trustees must annually, or oftener if so required by order of such court, file in the office of the clerk of the district court of the county where such cemetery is situated, a duly verified account showing a detailed statement of all moneys collected, of all securities on hand, together with all moneys disbursed during the preceding year. Any interested party may apply to the district court for an order requiring such trustee or such board of trustees to make such an accounting at any time. Any owner of an interest in any lot in the cemetery cared for by such trust, any trustee of the public cemetery district, and any trustee of the said trust fund, shall have the right to make any application to the court provided for in this chapter.

History: En. Sec. 7, Ch. 165, L. 1955.

9-223. Recording of instruments of appointment of trustees. All instruments of appointment of a trustee or of a board of trustees of such funds shall be recorded with the secretary of the public cemetery district establishing the fund and shall also be filed in the office of the clerk of the district court in the county in which such public cemetery district is located.

History: En. Sec. 8, Ch. 165, L. 1955.

9-224. Transfers of moneys to permanent care and improvement fund —resolution—maximum amount of fund. From and after the passage and approval of this act, the trustees of such cemetery district as are mentioned in section 9-217 shall provide by resolution spread upon the minutes of such public cemetery district, for the transfer to the trustees of such "permanent care and improvement fund," of not less than fifteen (15) nor more than forty (40) per cent of the moneys received from the sale of cemetery lots designated as perpetual care lots by said public cemetery district, together with all moneys theretofore or thereafter received from the owners of lots for the care of such lots; and such transfer of any such funds then on hand shall then and there be made; such transfers shall be made thereafter quarterly, upon the first days of January, April, July and October of each year, to the trustees of such fund. If at any time there shall remain in the hands of such public cemetery district unexpended money, over and above the liabilities of the public cemetery district, the board of trustees of such public cemetery district may, by a two-thirds vote, appropriate the whole or any portion of such unexpended moneys to such "permanent care and improvement fund"; provided, that such fund (exclusive of such portion thereof as may have been paid in by owners of lots for the care of such lots) shall never in any case be allowed to exceed the sum of five thousand dollars ($5,000.00) per acre of the cemetery to be cared for therewith; and when such fund shall reach such amount, all appropriations and payments thereto shall cease.

History: En. Sec. 9, Ch. 165, L. 1955.

9-225. Principal of fund to remain intact—income turned over to treasurer of district. The principal of such fund shall in all cases remain intact and inviolate. But the trustees of such fund shall, on the first of January and first of July in each year, turn over to the treasurer of such public cemetery district all accrued income arising from such fund, and the receipt of such treasurer therefor shall be a sufficient voucher in the hands of such trustees.

History: En. Sec. 10, Ch. 165, L. 1955.

9-226. Income from portion of fund received from sale of lots—use—specific payments for upkeep of lots—specifying in conveyance of lots of amount to be transferred to fund. The income of that portion of such fund, received from the sales of lots designated as perpetual care lots shall be used, in the discretion of the trustees of such public cemetery district, solely for the care, maintenance, and improvement of such cemetery lots, its grounds, roads, walks, and avenues leading thereto, except as herein provided. The income from such portion of such funds as shall have been

paid in by lot owners for the care of specific lots shall be segregated from the other portion, each lot being credited with its respective income, and shall be used solely for the care of such lots, respectively. In the event of any portion of the income so paid ever remaining unexpended for such purposes, for one (1) year after its being so paid over to the treasurer of such public cemetery district, it shall be returned to the trustees of such fund by said treasurer, and become a part of the principal. Hereafter all public cemetery districts shall distinctly specify in all conveyances of lots therein the percentage of the price received therefor, to be transferred under the provisions of this chapter to the "permanent care and improvement fund" of such public cemetery district, and also such further sum, if any there be, paid by the purchaser for the permanent care of the specific lot or lots thereby conveyed, so to be transferred as hereinbefore provided.

History: En. Sec. 11, Ch. 165, L. 1955.

9-227. Investment of principal. The principal of such fund may be invested in the way in which trust funds are permitted to be invested in the state of Montana and not otherwise; provided that each investment made by the trustee or by the board of trustees shall be subject to the approval of the board of trustees of the public cemetery district and also by the district judge of the county in which the cemetery is situated.

History: En. Sec. 12, Ch. 165, L. 1955.

9-228. Compensation of trustees — limitation — fees — payment. The trustee or the members of the board of trustees of such permanent care and improvement fund shall receive such compensation as may be agreed upon between such trustee or between such board of trustees of such permanent care and improvement fund on the one hand and the board of trustees of the public cemetery district on the other, provided that the total compensation of such trustee or of the entire board of trustees shall in no case exceed the sum of one hundred dollars ($100.00) per annum. The fees of such trustee or of the members of the board of trustees shall be paid out of the general fund of the public cemetery district until such trust fund shall reach ten thousand dollars ($10,000.00) and thereafter the same shall be paid out of the income of such fund.

History: En. Sec. 13, Ch. 165, L. 1955.

9-229. Secretary. The secretary of the public cemetery district shall act as secretary of such trustee or as secretary of such board of trustees of such fund and shall keep a full record of their proceedings.

History: En. Sec. 14, Ch. 165, L. 1955.

9-230. Annual report—inspection. The trustee or the board of trustees of such fund shall annually, on the first day of January, make their report of the condition of such trust fund to the trustees of the public cemetery district as hereinbefore provided. Such reports shall always be kept by the secretary of such public cemetery district, and by the clerk of the district court, and be open to the inspection of any person owning an interest in any lot in the cemetery cared for by such fund.

History: En. Sec. 15, Ch. 165, L. 1955.

9-231. Existing permanent improvement funds—effect on. Any "permanent improvement fund" established prior to the taking effect of this act by any public cemetery district, as far as consistent with the provisions of this act, shall remain in existence and be subject to the provisions hereof.

History: En. Sec. 16, Ch. 165, L. 1955.

9-232. Short title. This act may be cited as "The Public Cemetery District Permanent Care and Improvement Fund Act."

History: En. Sec. 19, Ch. 165, L. 1955.

CHAPTER 3

PUBLIC CEMETERIES—CONTROL BY CITIES AND TOWNS

Section 9-301. Title to cemetery grounds.
9-302. What constitutes a cemetery.
9-303. Cemeteries—how laid out and dedicated on public lands.
9-304. Inhabitants of city, town or village to own cemetery.
9-305. Jurisdiction and control of municipalities or county.
9-306. Powers of authorities having jurisdiction and control of cemeteries.
9-307. Register must be kept.

9-301. (5168) **Title to cemetery grounds.** The title to lands used as a public cemetery or graveyard, situated in or near to any city, town, or village, and used by the inhabitants thereof continuously, without interruption, as a burial-ground for five years, is vested in the inhabitants of such city, town, or village, and the lands must not be used for any other purpose than a public cemetery, except that the bodies interred therein may be removed, and no other interred therein, upon the order of the board of county commissioners, city council, or other body having authority, when it appears that the public health is endangered, or for any other good cause, but a new cemetery must be purchased and laid out by proper authority and such bodies removed and interred therein, and the old cemetery may be sold and the proceeds applied to the purchase of the new cemetery.

History: En. Sec. 2880, Pol. C. 1895; re-en. Sec. 1988, Rev. C. 1907; re-en. Sec. 5168, R. C. M. 1921. Cal. Pol. C. Sec. 3105.

Cross-Reference

Authority of cities to establish cemeteries, sec. 11-948.

Collateral References

Cemeteries⇐12.
14 C.J.S. Cemeteries § 20.
14 Am. Jur. 2d 700, Cemeteries, § 3.

9-302. (5169) **What constitutes a cemetery.** Six or more human bodies buried at one place constitutes the place a cemetery.

History: En. Sec. 2881, Pol. C. 1895; re-en. Sec. 1989, Rev. C. 1907; re-en. Sec. 5169, R. C. M. 1921. Cal. Pol. C. Sec. 3106.

Collateral References

Cemeteries⇐2.
14 C.J.S. Cemeteries § 1.

9-303. (5170) **Cemeteries—how laid out and dedicated on public lands.** Incorporated cities or towns, and for unincorporated towns or villages, the board of county commissioners of the county may survey, lay out, and dedicate of the public lands situated in or near such city, town,

or village, not exceeding five acres, for cemetery and burial purposes. The survey and description thereof, together with a certified copy of the order made constituting the same a cemetery, must be recorded in the office of the county clerk of the county in which the same is located.

History: En. Sec. 2882, Pol. C. 1895; re-en. Sec. 1990, Rev. C. 1907; re-en. Sec. 5170, R. C. M. 1921. Cal. Pol. C. Sec. 3107.

Collateral References
Cemeteries⇐4.
14 C.J.S. Cemeteries § 3.

9-304. (5171) **Inhabitants of city, town or village to own cemetery.** The inhabitants of any city, town, village, or neighborhood may, by subscription or otherwise, purchase or receive by gift or donation lands not exceeding one hundred and sixty acres, to be used as a cemetery, the title thereof to be vested in such inhabitants, and when once dedicated for use for burial purposes, must thereafter be used for no other purpose, except as provided in section 9-301.

History: En. Sec. 2883, Pol. C. 1895; re-en. Sec. 1991, Rev. C. 1907; re-en. Sec. 5171, R. C. M. 1921. Cal. Pol. C. Sec. 3108.

Collateral References
Cemeteries⇐11, 12.
14 C.J.S. Cemeteries §§ 19, 20.

9-305. (5172) **Jurisdiction and control of municipalities or county.** The public cemeteries of cities, towns, villages, or neighborhoods must be inclosed and laid off into lots, and the general management, conduct, and regulation of interments, permits to inter, or remove interred bodies, the disposition of lots, keeping the same in order, are under the jurisdiction and control of the cities and towns owning the same, if incorporated; if not, then under the jurisdiction and control of the board of county commissioners of the county in which they are situated.

History: En. Sec. 2884, Pol. C. 1895; re-en. Sec. 1992, Rev. C. 1907; re-en. Sec. 5172, R. C. M. 1921. Cal. Pol. C. Sec. 3109.

9-306. (5173) **Powers of authorities having jurisdiction and control of cemeteries.** The board of county commissioners, city trustees, or other corresponding authorities having jurisdiction and control of cemeteries, may make general rules and regulations therefor, and appoint sextons and other officers to enforce obedience to the same, with such other powers and duties regarding the cemetery as they may deem necessary, including the right by taxation to raise money, purchase land, lay out cemeteries, and manage them.

History: En. Sec. 2885, Pol. C. 1895; re-en. Sec. 1993, Rev. C. 1907; re-en. Sec. 5173, R. C. M. 1921.

9-307. (5174) **Register must be kept.** The authority having the control of a public or private cemetery must require a register of name, age, birthplace, and date of death and burial of every body interred therein, to be kept by the sexton or other officer, open to public inspection.

History: En. Sec. 2886, Pol. C. 1895; re-en. Sec. 1994, Rev. C. 1907; re-en. Sec. 5174, R. C. M. 1921.

CHAPTER 4

JOINT ESTABLISHMENT OF CEMETERIES BY COUNTIES AND CITIES

Section 9-401. Power of county commissioners to conduct cemeteries outside corporate limits—joint conduct of cemeteries.

9-401. (4514) **Power of county commissioners to conduct cemeteries outside corporate limits—joint conduct of cemeteries.** The board of county commissioners of any county within the state of Montana is hereby given jurisdiction and power to establish and conduct cemeteries outside of the corporate limits of any city or town, and to acquire lands for said purpose by purchase, condemnation, gift, or devise, and also to acquire by purchase, condemnation, gift, or devise, cemeteries already established and conducted by persons, firms, or corporations other than municipal corporations and are also given jurisdiction and power to establish and conduct cemeteries jointly with any incorporated city or town in such county, and jointly with any incorporated city or town, to acquire and conduct cemeteries already established or conducted by any person, firm, or corporation other than municipal corporations; provided, that nothing herein contained will permit the interment of bodies of deceased persons in any such cemetery so condemned and taken over as are, under the articles of incorporation or bylaws of such cemetery association or corporation, debarred from burial therein.

History: En. Sec. 1, Ch. 39, L. 1919; re-en. Sec. 4514, R. C. M. 1921.

References

Herrin v. Erickson, 90 M 259, 269, 2 P 2d 296.

Collateral References

Cemeteries⊂=4.
14 C.J.S. Cemeteries § 3.

CHAPTER 5

MAUSOLEUMS AND COLUMBARIUMS—TITLE OF ACT—DEFINITIONS

Section 9-501. Title of act—definitions.
9-502. "Human remains" or "remains" defined.
9-503. "Cremated remains" defined.
9-504. "Mausoleum" defined.
9-505. "Columbarium" and "urn garden" defined.
9-506. "Mausoleum-columbarium" defined.
9-507. "Crematory" defined.
9-508. "Interment" and "interment space" defined.
9-509. "Cremation" defined.
9-510. "Inurnment" defined.
9-511. "Entombment" defined.
9-512. "Crypt" or "vault" defined.
9-513. "Niche" defined.
9-514. "Temporary receiving vault" defined.
9-515. "Mausoleum-columbarium authority" defined.
9-516. "Mausoleum business," "columbarium business" and "mausoleum-columbarium business or purposes" defined.
9-517. "Directors" or "governing body" defined.
9-518. "Plot" or "interment plot" defined.
9-519. "Plot owner," "owner" or "proprietor" defined.

9-501. Title of act—definitions. This act shall be known as the "Mausoleum-Columbarium Act," and, for the purposes of this act, certain

words used herein shall have the meanings as defined in sections 9-502 to 9-519 hereof, inclusive.

History: En. Sec. 1, Ch. 35, L. 1949.

Collateral References
Cemeteries⇐3.
14 C.J.S. Cemeteries § 3.

9-502. "Human remains" or "remains" defined. "Human remains" or "remains" means the body of a deceased person, and includes the body in any stage of decomposition and cremated remains.

History: En. Sec. 2, Ch. 35, L. 1949.

9-503. "Cremated remains" defined. "Cremated remains" means human remains after cremation in a crematory.

History: En. Sec. 3, Ch. 35, L. 1949.

9-504. "Mausoleum" defined. "Mausoleum" means a permanent building or outdoor structure suitable for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated for interment purposes.

History: En. Sec. 4, Ch. 35, L. 1949.

9-505. "Columbarium" and "urn garden" defined. "Columbarium" means a structure, room, or other space in a permanent building or outdoor structure containing niches for permanent inurnment of cremated remains in a place used, or intended to be used, and dedicated for interment purposes. "Urn garden" means a permanent outdoor structure containing niches of stone or reinforced concrete suitable for and used, or intended to be used, for inurnment of cremated remains, in a place used, or intended to be used, and dedicated for interment purposes. Wherever the context shall permit "urn garden" shall be deemed to be included in "columbarium."

History: En. Sec. 5, Ch. 35, L. 1949.

9-506. "Mausoleum-columbarium" defined. "Mausoleum-columbarium" means a building or structure containing both a mausoleum and a columbarium.

History: En. Sec. 6, Ch. 35, L. 1949.

Collateral References
14 Am. Jur. 2d 740, Cemeteries, § 33.

9-507. "Crematory" defined. "Crematory" means a building or structure containing one or more retorts for the reduction of bodies of deceased persons to cremated remains.

History: En. Sec. 7, Ch. 35, L. 1949.

9-508. "Interment" and "interment space" defined. "Interment" means the disposition of human remains by cremation and inurnment, or entombment in a place used, or intended to be used, and dedicated for interment purposes. "Interment space" means any space in a crypt, vault or niche of sufficient size for the entombment or inurnment of the remains of one human being.

History: En. Sec. 8, Ch. 35, L. 1949.

9-509. "Cremation" defined. "Cremation" means the reduction of the body of a deceased person to cremated remains in a crematory.

History: En. Sec. 9, Ch. 35, L. 1949.

9-510. "Inurnment" defined. "Inurnment" means placing cremated remains in an urn or other permanent container and placing it in a niche.

History: En. Sec. 10, Ch. 35, L. 1949.

9-511. "Entombment" defined. "Entombment" means the placement of human remains in a crypt or vault.

History: En. Sec. 11, Ch. 35, L. 1949.

9-512. "Crypt" or "vault" defined. "Crypt" or "vault" means a space in a mausoleum of sufficient size used, or intended to be used, to entomb the uncremated human remains.

History: En. Sec. 12, Ch. 35, L. 1949.

9-513. "Niche" defined. "Niche" means a space in a columbarium or urn garden used, or intended to be used, for inurnment of cremated human remains.

History: En. Sec. 13, Ch. 35, L. 1949.

9-514. "Temporary receiving vault" defined. "Temporary receiving vault" means a vault used, or intended to be used, for the temporary placement of human remains.

History: En. Sec. 14, Ch. 35, L. 1949.

9-515. "Mausoleum-columbarium authority" defined. "Mausoleum-columbarium authority" means any corporation, whether for profit or not for profit, owning, controlling or operating lands, buildings or structures used, or intended to be used, and dedicated for interment purposes by entombment or inurnment, but shall not refer to any corporation for profit or not for profit, or any association, corporation sole, or other person owning or controlling cemetery lands or property including mausoleums and/or columbariums where interment is also made by ground burial.

History: En. Sec. 15, Ch. 35, L. 1949.

9-516. "Mausoleum business," "columbarium business" and "mausoleum-columbarium business or purposes" defined. "Mausoleum business," "columbarium business," and "mausoleum-columbarium business or purposes" are used interchangeably and mean any and all business and purposes requisite to, necessary for, or incident to, establishing, maintaining, operating, improving, or conducting a mausoleum, columbarium, or mausoleum-columbarium, interring human remains therein, and the care, preservation and embellishment of such property.

History: En. Sec. 16, Ch. 35, L. 1949.

9-517. "Directors" or "governing body" defined. "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a mausoleum-columbarium authority.

History: En. Sec. 17, Ch. 35, L. 1949.

9-518. "Plot" or "interment plot" defined. "Plot," or "interment plot" means space in a mausoleum or columbarium used, or intended to be used, for the interment of human remains. Such terms include and apply to one or more than one adjoining crypts or vaults, or one or more than one adjoining niches.

History: En. Sec. 18, Ch. 35, L. 1949.

9-519. "Plot owner," "owner" or "proprietor" defined. "Plot owner," or "owner," or "proprietor" means any person in whose name an interment plot stands of record as owner in the office of a mausoleum-columbarium authority.

History: En. Sec. 19, Ch. 35, L. 1949.

CHAPTER 6

AUTHORITY OVER DISPOSITION OF REMAINS IN MAUSOLEUMS OR COLUMBARIUMS—RECORDS

Section 9-601. Persons authorized to control disposition—liability for cost.
9-602. Liability of person signing authorization.
9-603. Authorization exempts mausoleum-columbarium from liability.
9-604. Limitation of actions against mausoleum-columbarium—funeral directors and morticians exempt from liability.
9-605. Removal of remains.
9-606. Application to court for removal—notice.
9-607. When removals excepted from sections 9-605, 9-606.
9-608. Records of interments and cremations required.
9-609. Records of plots and transfers.
9-610. Records open to inspection.
9-611. Record of casket before cremation.
9-612. Violation of section 9-611 a misdemeanor.

9-601. Persons authorized to control disposition—liability for cost. The right to control the disposition of the remains of a deceased person, unless other directions have been given by the decedent, vests in, and the duty of interment and the liability for the reasonable cost of interment of such remains devolves upon the following in the order named:

(a) The surviving spouse.

(b) The surviving children of the decedent.

(c) The surviving parents of the decedent.

The liability for the reasonable cost of interment devolves jointly and severally upon all kin of the decedent hereinbefore mentioned in the same degree of kindred and upon the estate of the decedent.

History: En. Sec. 23, Ch. 35, L. 1949.

Collateral References

Dead Bodies⇐1.

25A C.J.S. Dead Bodies § 2.

22 Am. Jur. 2d 557, 559, Dead Bodies, §§ 4, 6-8.

Civil liability of undertaker for acts or omissions relating to corpse. 17 ALR 2d 770.

9-602. Liability of person signing authorization. Any person signing any authorization for the interment or cremation of any remains warrants the truthfulness of any fact set forth in the authorization, the identity of the person whose remains are sought to be interred or cremated, and his

authority to order interments or cremation. He is personally liable for all damage occasioned by or resulting from breach of such warranty.

History: En. Sec. 24, Ch. 35, L. 1949.

9-603. Authorization exempts mausoleum-columbarium from liability. The mausoleum-columbarium authority may inter or cremate any remains upon the receipt of a written authorization of a person representing himself to be a person who has acquired the right to control the disposition of the remains. A mausoleum-columbarium authority is not liable for interring or cremating pursuant to such authorization, unless it has actual notice that such representation is untrue.

History: En. Sec. 25, Ch. 35, L. 1949.

Collateral References
Cemeteries⚿5.
14 C.J.S. Cemeteries § 11.

9-604. Limitation of actions against mausoleum-columbarium — funeral directors and morticians exempt from liability. No action shall lie against any mausoleum-columbarium authority relating to the remains of any person which have been left in its possession for a period of two (2) years, unless a written contract has been entered into with the mausoleum-columbarium authority for their care or unless permanent interment has been made. Nothing in this section shall be construed as an extension of the existing statute prescribing the period within which an action based upon a tort must be commenced. No licensed mortician or funeral director shall be liable in damages for any cremated human remains after the remains have been deposited with a mausoleum-columbarium authority in the state of Montana.

History: En. Sec. 26, Ch. 35, L. 1949; amd. Sec. 22, Ch. 41, L. 1963.

Collateral References
Cemeteries⚿5.
14 C.J.S. Cemeteries § 11.

9-605. Removal of remains. The remains of a deceased person may be removed from a plot in a mausoleum or columbarium with the consent of the mausoleum-columbarium authority and the written consent of one (1) of the following in the order named:

(a) The surviving spouse.
(b) The surviving children of the decedent.
(c) The surviving parents of the decedent.
(d) The surviving brothers or sisters of the decedent.

If the required consent cannot be obtained, permission by the district court in the county where the mausoleum or columbarium is situated is sufficient, provided that the permission shall not violate the terms of a written contract or the rules and regulations of the mausoleum-columbarium authority.

History: En. Sec. 27, Ch. 35, L. 1949.

25A C.J.S. Dead Bodies § 4.
22 Am. Jur. 2d 567, Dead Bodies, § 18.

Collateral References
Dead Bodies⚿5.

9-606. Application to court for removal—notice. Notice of application to the court for such permission shall be given, at least ten (10) days

prior thereto, personally, or at least fifteen (15) days prior thereto if by mail, to the mausoleum-columbarium authority and to the persons not consenting, and to every other person on whom service of notice may be required by the court.

History: En. Sec. 28, Ch. 35, L. 1949.

9-607. When removals excepted from sections 9-605, 9-606. Sections 9-605, 9-606 do not apply to or prohibit the removal of any remains from one plot to another in the same dedicated area, owned or operated by the same mausoleum-columbarium authority, from a plot for which the purchase price is past due and unpaid, to some other suitable place; nor does it apply to the disinterment of remains upon order of court or coroner.

History: En. Sec. 29, Ch. 35, L. 1949.

9-608. Records of interments and cremations required. The mausoleum-columbarium authority in charge of any mausoleum or columbarium in which interments or cremations are made, shall keep a record of all remains interred or cremated on the premises under its charge, in each case stating the name of each deceased person, date of cremation or interment, and name and address of the funeral director.

History: En. Sec. 33, Ch. 35, L. 1949.

Collateral References

Cemeteries⇨5.
14 C.J.S. Cemeteries § 11.

9-609. Records of plots and transfers. A record shall be kept of the ownership of all plots in the mausoleum and columbarium which have been conveyed by the mausoleum-columbarium authority, and of all transfers of plots therein. No transfer of any plot, heretofore or hereafter made, or any right of interment, shall be complete or effective until recorded on the books of the mausoleum-columbarium authority.

History: En. Sec. 34, Ch. 35, L. 1949.

Collateral References

Cemeteries⇨5.
14 C.J.S. Cemeteries § 11.

9-610. Records open to inspection. The records shall be open to inspection during the customary office hours of the mausoleum-columbarium authority.

History: En. Sec. 35, Ch. 35, L. 1949.

9-611. Record of casket before cremation. No crematory operated by a mausoleum-columbariun authority shall hereafter cremate the remains of any human body without making a permanent signed record of the color, shape and outside covering of the casket consumed with such body, said record to be open to inspection of any person lawfully entitled thereto.

History: En. Sec. 51, Ch. 35, L. 1949.

9-612. Violation of section 9-611 a misdemeanor. Each person violating any provision of section 9-611 shall be guilty of a misdemeanor and each violation shall constitute a separate offense.

History: En. Sec. 52, Ch. 35, L. 1949.

CHAPTER 7

CORPORATIONS FOR OPERATION OF MAUSOLEUMS OR COLUMBARIUMS—POWERS

Section 9-701. Limitation on authority to engage in business.
9-702. Authority of corporations—number of members on governing board.
9-703. Cemetery corporations unaffected—application of act.
9-704. Corporate powers enlarged.
9-705. Powers to make rules and regulations.
9-706. Limitations on use of property.
9-707. Regulation of markers, monuments and structures.
9-708. Regulation or prohibition of erection of monuments, markers or structures.
9-709. Regulation of plants or shrubs.
9-710. Regulation of interments.
9-711. Regulation of personal conduct.
9-712. Other rules and regulations.
9-713. Rules and regulations to be printed or typed—inspection.
9-714. Police powers of person in charge.
9-715. General powers.
9-716. Acquisition of property.

9-701. Limitation on authority to engage in business. It is unlawful for any corporation, copartnership, firm, trust, association, or individual to engage in or transact any of the businesses of a mausoleum-columbarium within this state except by means of a corporation duly organized for that purpose.

History: En. Sec. 36, Ch. 35, L. 1949.

Collateral References

Cemeteries⇦1.
14 C.J.S. Cemeteries § 2.

9-702. Authority of corporations—number of members on governing board. Any private corporation organized under the laws of the state of Montana and authorized by its articles so to do, may establish, maintain, manage, improve or operate a mausoleum, columbarium or crematory, or any combination thereof, and conduct any or all of the businesses of a mausoleum-columbarium and crematory either for or without profit to its members or stockholders. The governing board of any mausoleum-columbarium authority shall have not less than seven members.

History: En. Sec. 37, Ch. 35, L. 1949.

Collateral References

Cemeteries⇦1.
14 C.J.S. Cemeteries § 2.

9-703. Cemetery corporations unaffected — application of act. The provisions of this act do not affect the corporate existence, or rights or powers of any cemetery corporation organized under any law of the state of Montana in which a mausoleum, columbarium, or crematory, or combination thereof, shall be situated, maintained or operated in conjunction with a cemetery for the burial of dead human remains by ground interment. This act and all its provisions shall be applicable to and only to mausoleums and/or columbariums owned, operated or controlled by a mausoleum-columbarium authority organized and governed as herein provided, and owning, controlling or operating lands, buildings, structures, etc., solely for the entombment and inurnment of human remains.

History: En. Sec. 38, Ch. 35, L. 1949.

Collateral References

Cemeteries⇦5.
14 C.J.S. Cemeteries § 11.

9-704. Corporate powers enlarged. The powers, privileges and duties conferred and imposed upon any corporation existing and doing business under the laws of the state are hereby enlarged as each particular case may require to conform to the provisions of this act.

History: En. Sec. 39, Ch. 35, L. 1949.

Collateral References
Cemeteries⇦5.
14 C.J.S. Cemeteries § 11.

9-705. Powers to make rules and regulations. A mausoleum-columbarium authority may make, adopt, amend, add to, revise or modify, and enforce rules and regulations, for the use, care, control, management, restriction and protection of all or any part of its mausoleum, columbarium or crematory, and for the other purposes specified in sections 9-706 to 9-714, inclusive.

History: En. Sec. 40, Ch. 35, L. 1949.

9-706. Limitations on use of property. It may restrict and limit the use of all property within its mausoleum, columbarium or crematory.

History: En. Sec. 41, Ch. 35, L. 1949.

9-707. Regulation of markers, monuments and structures. It may regulate the uniformity, class, and kind of all markers, monuments, and other structures within the mausoleum-columbarium.

History: En. Sec. 42, Ch. 35, L. 1949.

Collateral References
Cemeteries⇦18.
14 C.J.S. Cemeteries § 33.

9-708. Regulation or prohibition of erection of monuments, markers or structures. It may regulate or prohibit the erection of monuments, markers, effigies, and structures within any portion of the mausoleum-columbarium or the grounds within which they may be situated.

History: En. Sec. 43, Ch. 35, L. 1949.

Collateral References
Cemeteries⇦18.
14 C.J.S. Cemeteries § 33.

9-709. Regulation of plants or shrubs. It may regulate or prevent the introduction or care of plants or shrubs within the mausoleum-columbarium or the grounds within which they may be situated.

History: En. Sec. 44, Ch. 35, L. 1949.

9-710. Regulation of interments. It may prevent interment in any part of the mausoleum or columbarium of human remains not entitled to interment, and prevent the use of interment plots for purposes violative of its restrictions or rules and regulations.

History: En. Sec. 45, Ch. 35, L. 1949.

Collateral References
Dead Bodies⇦3.
25A C.J.S. Dead Bodies § 5.

9-711. Regulation of personal conduct. It may regulate the conduct of persons and prevent improper assemblages in the mausoleum-columbarium or on the grounds within which the same are situated.

History: En. Sec. 46, Ch. 35, L. 1949.

9-712. Other rules and regulations. It may make and enforce rules and regulations for all other purposes deemed necessary by the mausoleum-columbarium authority for the proper conduct of the business of the mausoleum, columbarium or crematory, for the transfer of any plot or the right of interment, and the protection and safeguarding of the premises, and the principles, plans and ideals on which the mausoleum, columbarium or crematory is conducted.

History: En. Sec. 47, Ch. 35, L. 1949.

9-713. Rules and regulations to be printed or typed—inspection. The rules and regulations made pursuant to section 9-712, shall be plainly printed or typewritten and maintained subject to inspection in the office of the mausoleum-columbarium authority or in such place or places within the mausoleum or columbarium as the mausoleum-columbarium authority may prescribe.

History: En. Sec. 48, Ch. 35, L. 1949.

9-714. Police powers of person in charge. The sexton, superintendent or other person in charge of a mausoleum-columbarium, and such other person as the mausoleum-columbarium authority designates has the authority of a police officer for the purpose of maintaining order, enforcing the rules and regulations of the mausoleum-columbarium authority, the laws of the state, and the ordinances of the city or county, within the mausoleum-columbarium over which he has charge, and within such radius as may be necessary to protect the mausoleum-columbarium or crematory property.

History: En. Sec. 49, Ch. 35, L. 1949.

9-715. General powers. Unless otherwise limited by the law under which created, mausoleum-columbarium authorities, whether for profit or not for profit, shall in the conduct of their business, have the same powers granted by law to corporations in general, including the right to contract such pecuniary obligations within the limitations of general laws as may be required, and may secure them by mortgage, deed of trust, or otherwise upon their property. A mausoleum-columbarium authority shall have power to carry on, in connection with its mausoleum-columbarium business, and either on the dedicated premises or separately, any business incidental to the burial, or preparation for burial, of dead human bodies.

History: En. Sec. 53, Ch. 35, L. 1949.

Collateral References

Cemeteries⇨5.
14 C.J.S. Cemeteries § 11.

9-716. Acquisition of property. Mausoleum-columbarium authorities may take by purchase, donation or devise, property consisting of lands, mausoleums, crematories and columbariums within which the interment of the dead may be authorized by law.

History: En. Sec. 55, Ch. 35, L. 1949.

Collateral References

Cemeteries⇨11.
14 C.J.S. Cemeteries § 19.

CHAPTER 8

DEDICATION OF MAUSOLEUM OR COLUMBARIUM PROPERTY—PLATS—PROPERTY RIGHTS IN PLOTS

Section 9-801. Map or plat to be made.
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9-801. Map or plat to be made. Every mausoleum-columbarium authority, from time to time as its property may be required for interment purposes, shall make a good and substantial map or plat on which shall be delineated the sections, halls, rooms, corridors, elevations, outdoor mausoleums, urn gardens and other divisions with descriptive names or numbers.

History: En. Sec. 56, Ch. 35, L. 1949.

14 C.J.S. Cemeteries § 2.
14 Am. Jur. 2d 732, Cemeteries, § 25.

Collateral References

Cemeteries⇐1.

9-802. Filing map or plat—declaration of dedication. The mausoleum-columbarium authority shall file the map or plat in the office of the recorder of the county in which all or a portion of the property is situated. The mausoleum-columbarium authority shall also file for record in the county recorder's office a written declaration of dedication of the property delineated on the plat or map, dedicating the property exclusively to interment purposes.

History: En. Sec. 57, Ch. 35, L. 1949.

26 C.J.S. Dedication § 8.
14 Am. Jur. 2d 717, Cemeteries, § 14.

Collateral References

Dedication⇐10.

9-803. Dedication complete on filing—tax exemption. Upon the filing of the map or plat and the filing of the declaration for record, the dedication is complete for all purposes and thereafter the property and all mausoleums and columbariums constructed thereon and burial plots located therein, shall be held, occupied, and used exclusively for interment purposes, and shall be exempt from all state, county and municipal taxes to the same extent as cemetery property intended to be used for the burial of the human dead by ground interment.

History: En. Sec. 58, Ch. 35, L. 1949.

Collateral References
Dedication⚖10.
26 C.J.S. Dedication § 8.

9-804. Amended map or plat. Any part of subdivision of the property so mapped and plotted may, by order of the directors, be resurveyed and altered in shape and size and an amended map or plat filed, so long as such change does not disturb the interred remains of any deceased person.

History: En. Sec. 59, Ch. 35, L. 1949.

9-805. Filed map and recorded declaration as constructive notice. The filed map or plat and the recorded declaration are constructive notice to all persons of the property to interment purposes.

History: En. Sec. 60, Ch. 35, L. 1949.

9-806. Effect of dedication. After property is dedicated to interment purposes pursuant to sections 9-801 to 9-805, inclusive, neither the dedication, nor the title of a plot owner, shall be affected by the dissolution of the mausoleum-columbarium authority, by nonuser on its part, by alienation of the property, by any encumbrances, by sale under execution, or otherwise except as provided in this act.

History: En. Sec. 61, Ch. 35, L. 1949.

Collateral References
Dedication⚖46.
26 C.J.S. Dedication § 49.

9-807. Encumbrances or liens—effect. All mortgages, deeds of trust and other liens of any nature, hereafter contracted, placed or incurred upon property which has been and was at the time of the creation or placing of the lien, dedicated as a mausoleum-columbarium pursuant to this part, or upon property which is afterwards, with the consent of the owner of any mortgage, trust deed or lien, dedicated to the mausoleum-columbarium purposes pursuant to this part, shall not affect or defeat the dedication, but the mortgage, deed of trust, or other lien is subject and subordinate to such dedication and any and all sales made upon foreclosures are subject and subordinate to the dedication for mausoleum-columbarium purposes.

History: En. Sec. 54, Ch. 35, L. 1949.

Collateral References
Dedication⚖53.
26 C.J.S. Dedication § 50.

Compiler's Note
Although there are references in this section to "this part" the act was not divided into parts.

9-808. Dedication not violative of law against perpetuities. Dedication to interment purposes pursuant to this act is not invalid as violating

any laws against perpetuities or the suspension of the power of alienation of title to or use of property, but is expressly permitted and shall be deemed to be in respect for the dead, a provision for the interment of human remains, and a duty to, and for the benefit of, the general public.

History: **En. Sec. 62, Ch. 35, L. 1949.**

Collateral References
Perpetuities⇐4 (1), 6 (1).

9-809. Rights of way for utilities prohibited—consent. After dedication pursuant to this act, and as long as the property remains dedicated to interment purposes, no railroad, street, road, alley, pipeline, pole line, or other public thoroughfare or utility shall be laid out, through, over, or across any part of it without the consent of the mausoleum-columbarium authority owning and operating it, or of not less than two-thirds of the owners of interment plots therein.

History: **En. Sec. 63, Ch. 35, L. 1949.**

Collateral References
Dedication⇐57.
26 C.J.S. Dedication § 54.

9-810. Sale of interment plots. After filing the map or plat and recording the declaration of dedication, a mausoleum-columbarium authority may sell and convey interment plots subject to such rules and regulations as may be then in effect or thereafter adopted by the mausoleum-columbarium authority, and subject to such other and further limitations, conditions and restrictions as may be inserted in or made a part of the declaration of dedication by reference, or included in the instrument of conveyance of such plot.

History: **En. Sec. 64, Ch. 35, L. 1949.**

Cross-Reference
Records of plots and transfers required, sec. 9-609.

Collateral References
Cemeteries⇐15.
14 C.J.S. Cemeteries § 32.

9-811. Separate plots indivisible. All plots, the use of which has been conveyed by deed or certificate of ownership as a separate plot, are indivisible except with the consent of the mausoleum-columbarium authority, or as provided by law.

History: **En. Sec. 65, Ch. 35, L. 1949.**

Collateral References
Cemeteries⇐15.
14 C.J.S. Cemeteries § 32.

9-812. Signature on conveyance. All conveyances made by a mausoleum-columbarium authority shall be signed by such officer or officers as are authorized by the mausoleum-columbarium authority.

History: **En. Sec. 66, Ch. 35, L. 1949.**

Collateral References
Cemeteries⇐13.
14 C.J.S. Cemeteries § 21.

9-813. Selling for resale at profit—misdemeanor. It shall be unlawful for any person, firm or corporation to sell or offer to sell a mausoleum-columbarium plot upon the promise, representation or inducement of resale at a financial profit. Each person violating this section shall be guilty of a misdemeanor and each violation shall constitute a separate offense.

History: En. Sec. 67, Ch. 35, L. 1949.

Collateral References
Cemeteries⊂=15.
14 C.J.S. Cemeteries § 32.

9-814. Commission or rebate for sale—misdemeanor—exception. It shall be unlawful for a mausoleum-columbarium authority to pay or offer to pay to any person, firm or corporation, directly or indirectly, a commission or bonus or rebate or other thing of value for the sale of a plot or services. This shall not apply to a person regularly employed by the mausoleum-columbarium authority or to any bona fide agent of the authority previously appointed for such purpose. Each person violating this section shall be guilty of a misdemeanor and each violation shall constitute a separate offense.

History: En. Sec. 68, Ch. 35, L. 1949.

Collateral References
Cemeteries⊂=15.
14 C.J.S. Cemeteries § 32.

9-815. Commission or bonus for causing disposition of body in mausoleum or columbarium—misdemeanor. Every person who pays or causes to be paid or offers to pay to any other person, firm, or corporation, directly or indirectly, except as provided in section 9-814, any commission or bonus or rebate, or other thing of value in consideration of recommending or causing a dead human body to be disposed of in any crematory, mausoleum or columbarium, is guilty of a misdemeanor and each violation shall constitute a separate offense.

History: En. Sec. 69, Ch. 35, L. 1949.

9-816. Removal of dedication by order of court. Property dedicated to interment purposes shall be held and used exclusively for interment purposes, unless and until the dedication is removed from all or any part of it by an order and decree of the district court in the county in which the property is situated, in a proceeding brought by the mausoleum-columbarium authority for that purpose and upon notice of hearing and proof satisfactory to the court:

(a) That no interments were made in or that all interments have been removed from that portion of the property from which dedication is sought to be removed.

(b) That the portion of the property from which dedication is sought to be removed is not being used for interment of human remains.

History: En. Sec. 70, Ch. 35, L. 1949.

Collateral References
Dedication⊂=38.
26 C.J.S. Dedication § 60.

Cross-Reference
Application of Montana Rules of Civil Procedure to proceeding for removal, see M. R. Civ. P., Rule 81(a), Table A.

9-817. Notice of hearing on removal of dedication. The notice of hearing provided in section 9-816 shall be given by publication once a week for at least three (3) consecutive weeks in a newspaper of general circulation in the county where said mausoleum or columbarium is located, and the posting of copies of the notice in three (3) conspicuous places on that

portion of the property from which the dedication is to be removed. Said notice shall:

(a) Describe the portion of the mausoleum or columbarium property sought to be removed from dedication.

(b) State that all remains have been removed or that no interments have been made in the portion of the mausoleum or columbarium property sought to be removed from dedication.

(c) Specify the time and place of the hearing.

History: En. Sec. 71, Ch. 35, L. 1949.

9-818. Property interest in plot. All plots conveyed to individuals are presumed to be the sole and separate property of the owner named in the instrument of conveyance.

History: En. Sec. 72, Ch. 35, L. 1949.

Collateral References

Cemeteries⚖15.

14 C.J.S. Cemeteries § 32.

14 Am. Jur. 2d 732, Cemeteries, § 25 et seq.

9-819. Spouse—vested right of interment. The spouse of an owner of any plot containing more than one (1) interment space has a vested right of interment of his remains in the plot and any person thereafter becoming the spouse of the owner has a vested right of interment of his remains in the plot if an interment space therein not subject to the vested right of interment for previous spouses is unoccupied at the time such person becomes the spouse of the owner.

History: En. Sec. 73, Ch. 35, L. 1949.

Collateral References

Cemeteries⚖15.

14 C.J.S. Cemeteries § 32.

9-820. Right of spouse not divested by conveyance—effect of divorce. No conveyance or other action of the owner without the written consent or joinder of the spouse of the owner divests the spouse of a vested right of interment, except that a final decree of divorce between them terminates the vested right of interment unless otherwise provided in the decree.

History: En. Sec. 74, Ch. 35, L. 1949.

9-821. Descent of plot on death of owner. If no interment is made in a plot which has been transferred by deed or certificate of ownership to an individual owner, or if all remains previously interred therein are lawfully removed, the plot descends, upon the death of the owner, to his heirs-at-law subject to the rights of interment of the decedent and his surviving spouse, unless he has disposed of the plot either in his will by specific devise or by a written declaration filed and recorded in the office of the mausoleum-columbarium authority.

History: En. Sec. 75, Ch. 35, L. 1949.

Cross-Reference

Effect of interment of member of family having been made at time of owner's death, sec. 9-828.

Collateral References

Descent and Distribution⚖8.

26A C.J.S. Descent and Distribution § 8.

9-822. Exemption from inheritance tax. Mausoleum or columbarium property passing to an individual by reason of the death of the owner is exempt from all inheritance taxes.

History: En. Sec. 76, Ch. 35, L. 1949.

Collateral References
Taxation⇐872.

9-823. Affidavit showing death of owner and name of person entitled to plot. An affidavit by a person having knowledge of the facts setting forth the fact of the death of the owner and the name of the person or persons entitled to the use of the plot pursuant to sections 9-818 to 9-821, inclusive, is a complete authorization to the mausoleum-columbarium authority to permit the use of the unoccupied portions of the plot by the person entitled to the use of it.

History: En. Sec. 77, Ch. 35, L. 1949.

Collateral References
Cemeteries⇐15.
14 C.J.S. Cemeteries § 32.

9-824. Conveyance to joint tenants. In a conveyance to two (2) or more persons as joint tenants each joint tenant has a vested right of interment in the plot conveyed.

History: En. Sec. 78, Ch. 35, L. 1949.

Collateral References
Cemeteries⇐15.
14 C.J.S. Cemeteries § 32.

9-825. Death of joint tenant—effect. Upon the death of a joint tenant, the title to the plot held in joint tenancy immediately vests in the survivors, subject to the vested right of interment of the remains of the deceased joint tenant.

History: En. Sec. 79, Ch. 35, L. 1949.

Collateral References
Joint Tenancy⇐6.
48 C.J.S. Joint Tenancy § 1.

9-826. Affidavit showing death of joint tenant and identity of survivors. An affidavit by any person having knowledge of the facts setting forth the fact of the death of one (1) joint tenant and establishing the identity of the surviving joint tenants named in the deed to any plot, when filed with the mausoleum-columbarium authority operating the mausoleum-columbarium in which the plot is located, is a complete authorization to the mausoleum-columbarium authority to permit the use of the unoccupied portion of the plot in accordance with the directions of the surviving joint tenants or their successors in interest.

History: En. Sec. 80, Ch. 35, L. 1949.

Collateral References
Cemeteries⇐15.
14 C.J.S. Cemeteries § 32.

9-827. Co-owners of plot—designation of representative. When there are several owners of a plot, or of rights of interment in it, they may designate one (1) or more persons to represent the plot and file written notice of such designation with the mausoleum-columbarium authority. In the absence of such notice or of written objection to its so doing, the mausoleum-columbarium authority is not liable to any owner for interring or

permitting an interment in the plot upon the request or direction of any co-owner of the plot.

History: En. Sec. 81, Ch. 35, L. 1949.

Collateral References
Cemeteries⇨16.
14 C.J.S. Cemeteries § 31.

9-828. Death of owner after interment of member of family—family plot. Whenever the remains of the record owner or of a member of his family or of a relative of a member of his family have been interred in a plot transferred by deed or certificate of ownership to an individual owner and the owner shall have died without making disposition of the plot either in his will by a specific devise, or by a written declaration filed and recorded in the office of the mausoleum-columbarium authority, the plot thereby becomes inalienable and shall be held as the family plot of the owner.

History: En. Sec. 82, Ch. 35, L. 1949.

Collateral References
Cemeteries⇨15.
14 C.J.S. Cemeteries § 32.

9-829. Family plot—persons who may be interred. In a family plot one (1) crypt or one (1) niche or interment space therein may be used for the owner's interment; one (1) for the owner's surviving spouse, if any, who by law has a vested right of interment in it; and in those remaining, if any, the parents and children of the deceased owner in order of death may be interred without the consent of any person claiming any interest in the plot.

History: En. Sec. 83, Ch. 35, L. 1949.

Collateral References
Cemeteries⇨16.
14 C.J.S. Cemeteries § 31.

9-830. Right of interment when no parent or child survives. If no parent or child survives, the right of interment goes in the order of death first, to the spouse of any child of the record owner and second, in the order of death to the next heirs-at-law of the owner or the spouse of any heir-at-law.

History: En. Sec. 84, Ch. 35, L. 1949.

9-831. Waiver of right of interment in family plot. Any surviving spouse, parent, child, or heir having a right of interment in a family plot may waive such right in favor of any other relative or spouse of a relative of the deceased owner, and upon such waiver the remains of the person in whose favor the waiver is made may be interred in the plot.

History: En. Sec. 85, Ch. 35, L. 1949.

9-832. Waiver of vested right—termination of right upon interment elsewhere. A vested right of interment may be waived and is terminated upon the interment elsewhere of the remains of the person in whom it is vested.

History: En. Sec. 86, Ch. 35, L. 1949.

9-833. Limitations on vested right of interment. No vested right of interment gives to any person the right to have his remains interred in any

interment space in which the remains of any deceased person having a prior vested right of interment have been interred, nor does it give any person the right to have the remains of more than one deceased person interred in a single interment space in violation of the rules and regulations of the mausoleum-columbarium authority controlling the operation of the mausoleum or columbarium in which the interment space is located.

History: En. Sec. 87, Ch. 35, L. 1949.

9-834. Devise to mausoleum-columbarium authority by lot owner—effect. A mausoleum-columbarium authority may take and hold any plot conveyed or devised to it by the plot owner so that it will be inalienable, and interments shall be restricted to the persons designated in the conveyance or devise.

History: En. Sec. 88, Ch. 35, L. 1949.

CHAPTER 9

ENDOWMENT CARE FUNDS OF MAUSOLEUMS AND COLUMBARIUMS

Section
9-901. Authority to establish endowment care fund—investment.
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9-903. Investment of funds—use of income.
9-904. Plans for general care—collections from purchasers of plots for fund.
9-905. Agreement for care in accordance with plan.
9-906. Agreement for endowment care of plot.
9-907. Board of trustees for fund.
9-908. Directors of mausoleum-columbarium authority may act as trustees—investments.
9-909. Bank or trust company as trustee.
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9-919. Nonendowment care mausoleum or columbarium—sign required.
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9-921. Investment of fund.
9-922. Acceptance of bequests.
9-923. Contributions are for charitable and eleemosynary purposes—validity of contributions.
9-924. Director or officer not to borrow funds.
9-925. Existing operators becoming subject to act—delivery of funds.
9-926. Officer or director violating act—vacancy.
9-927. Officer or director authorizing or consenting to loan—misdemeanor.

9-901. Authority to establish endowment care fund—investment. Every mausoleum-columbarium authority which now or hereafter maintains a mausoleum or columbarium may place its mausoleum or columbarium under endowment care and establish, maintain, and operate an irreducible endowment care fund. Endowment care and special care funds may be commingled for investment and the income therefrom shall be divided between the endowment care and special care funds in the proportion that each fund contributed to the principal sum invested. The funds may be

held in the name of the mausoleum-columbarium authority or its directors or in the name of the trustees appointed by the mausoleum-columbarium authority.

History: En. Sec. 89, Ch. 35, L. 1949.

Collateral References
Cemeteries⇐17.
14 C.J.S. Cemeteries § 29.

9-902. Principal of funds irreducible. The principal of all funds for endowment care shall forever remain irreducible and inviolable and shall be maintained separate and distinct from all other funds.

History: En. Sec. 90, Ch. 35, L. 1949.

9-903. Investment of funds—use of income. The principal of all funds for endowment care shall be invested, from time to time reinvested, and kept invested and the income earned shall be used solely for the general care, maintenance, and embellishment of the mausoleum or columbarium or both, and the grounds in which they are situated, and shall be applied in such manner as the mausoleum-columbarium authority may from time to time determine to be for the best interest of the mausoleum-columbarium.

History: En. Sec. 91, Ch. 35, L. 1949.

9-904. Plans for general care—collections from purchasers of plots for fund. The mausoleum-columbarium authority may from time to time adopt plans for the general care, maintenance, and embellishment of its mausoleum-columbarium, and charge and collect from all subsequent purchasers of plots such reasonable sums as, in the judgment of the mausoleum-columbarium authority, will aggregate a fund, the reasonable income from which will provide reasonable care, maintenance and embellishment.

History: En. Sec. 92, Ch. 35, L. 1949.

9-905. Agreement for care in accordance with plan. Upon payment of the purchase price and the amount fixed as a proportionate contribution for endowment care, there may be included in the deed of conveyance, or in a separate instrument, an agreement to care, in accordance with the plan adopted, for the mausoleum or columbarium and its appurtenances to the proportionate extent that the income received by the mausoleum-columbarium authority from the contribution will permit.

History: En. Sec. 93, Ch. 35, L. 1949.

9-906. Agreement for endowment care of plot. Upon the application of the owner of any plot, and upon the payment by him of the amount fixed as a reasonable and proportionate contribution for endowment care, a mausoleum-columbarium authority may enter into an agreement with him for the care of his plot and its appurtenances.

History: En. Sec. 94, Ch. 35, L. 1949.

9-907. Board of trustees for fund. The mausoleum-columbarium authority may appoint a board of trustees of not less than five (5) in number for its endowment care fund. The members of the board of trustees shall

hold office subject to the discretion of the mausoleum-columbarium authority.

History: En. Sec. 95, Ch. 35, L. 1949.

9-908. Directors of mausoleum-columbarium authority may act as trustees—investments. The directors of a mausoleum-columbarium authority, if any, may be constituted as the trustees of its endowment care fund. When the fund is in the care of the directors as a board of trustees the secretary of the mausoleum-columbarium authority shall act as secretary of the board of trustees and keep a true record of all of its proceedings. The investments of the endowment care fund may be held in the name of the mausoleum-columbarium authority.

History: En. Sec. 96, Ch. 35, L. 1949.

9-909. Bank or trust company as trustee. In lieu of the appointment of a board of trustees of its endowment care fund, any mausoleum-columbarium authority may appoint as sole trustee of its endowment care fund any bank or trust company qualified to engage in the trust business in the state of Montana, and such bank or trust company shall be authorized to receive and accept said fund, and all accretions thereto, including any accumulated endowment care fund in existence at the time of its appointment.

History: En. Sec. 97, Ch. 35, L. 1949.

9-910. Compensation of trustees. No sum in excess of five per cent (5%) of the income derived from the fund in any year shall be paid as compensation to the board of trustees for its services as trustee, provided that if five per cent (5%) of such income divided by the number of trustees shall be less than one hundred dollars ($100.00) each trustee shall, nevertheless be entitled to receive a minimum of one hundred dollars ($100.00) per year for his services as such trustee.

History: En. Sec. 98, Ch. 35, L. 1949.

9-911. Annual report of financial condition. The mausoleum-columbarium authority or the persons in whose names the endowment care funds are held shall, annually, and within ninety (90) days after the end of the calendar or fiscal year of the mausoleum-columbarium authority, make and file with the district court in the county in which the mausoleum-columbarium is located, a true and correct written report, verified on oath by an officer of the mausoleum-columbarium authority or by the oath of one or more of the trustees, showing the actual financial condition of the endowment care funds.

History: En. Sec. 99, Ch. 35, L. 1949.

9-912. Property contributed to fund. A mausoleum-columbarium authority which has established an endowment care fund may take, receive, and hold as a part of or incident to the fund any property, real, personal or mixed, bequeathed, devised, granted, given or otherwise contributed to it for its endowment care fund.

History: En. Sec. 100, Ch. 35, L. 1949.

9-913. Contributions are for charitable and eleemosynary purposes—validity of contributions. The endowment care fund and all payments or contributions to it are hereby expressly permitted as and for charitable and eleemosynary purposes. Endowment care is a provision for the discharge of a duty from the persons contributing to the persons interred and to be interred in the mausoleum-columbarium and a provision for the benefit and protection of the public by preserving and keeping mausoleum-columbariums from becoming unkept and places of reproach and desolation in the communities in which they are situated. No payment, gift, grant, bequest, or other contribution for general endowment care is invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating the trust, nor is the fund or any contribution to it invalid as violating any law against perpetuities, or the suspension of the power of alienation of title to property.

History: En. Sec. 101, Ch. 35, L. 1949.

9-914. Endowment care mausoleum-columbarium — amount of deposit required. An endowment care mausoleum-columbarium is one which shall hereafter deposit in its endowment care fund not less than the following amounts for plots sold or disposed of:

(a) Five dollars ($5.00) for each niche.

(b) Fifteen dollars ($15.00) for each crypt.

The deposit shall be made not later than the twentieth (20th) day of the month following the final payment on the purchase price of the plot.

History: En. Sec. 102, Ch. 35, L. 1949.

9-915. Nonendowment care mausoleum-columbarium. A nonendowment care mausoleum-columbarium is one that does not deposit in an endowment care fund the minimum specified in section 9-914.

History: En. Sec. 103, Ch. 35, L. 1949.

9-916. Endowment care mausoleum or columbarium—sign required. Each mausoleum-columbarium authority operating an endowment care mausoleum or columbarium shall post in a conspicuous place in its office or offices where sales are conducted and in a conspicuous place at or near the entrance of the mausoleum or columbarium or its administration building and readily accessible to the public, a legible sign with the following phrase: "This is an endowment care property."

History: En. Sec. 104, Ch. 35, L. 1949.

9-917. Annual report filed in principal office. Each mausoleum-columbarium authority operating an endowment care mausoleum or columbarium shall file in its principal office a written report which shall be available to any plot owner and which shall contain as of the close of its last fiscal year:

(a) Amount of principal of the endowment care fund.

(b) Total amount invested in bonds, securities or other investments authorized by law and the total amount of cash on hand not invested which shall actually show the financial condition of the trust.

History: En. Sec. 105, Ch. 35, L. 1949.

9-918. Annual revision of report—verification. All the information appearing on the report filed in the mausoleum-columbarium authority office shall be revised annually and verified by the president and secretary, or two (2) officers authorized by the mausoleum-columbarium authority.

History: En. Sec. 106, Ch. 35, L. 1949.

9-919. Nonendowment care mausoleum or columbarium—sign required. Each mausoleum-columbarium authority operating a nonendowment care mausoleum or columbarium shall post in a conspicuous place in its office or offices where sales are conducted and in a conspicuous place at or near the entrance of the mausoleum or columbarium or its administration building and readily accessible to the public, a legible sign with the following phrase: "This is not an endowment care property." This phrase likewise shall be printed or stamped at the head of all contracts, certificates of ownership or deeds.

History: En. Sec. 107, Ch. 35, L. 1949.

9-920. Violation of preceding sections a misdemeanor. Any corporation or its agents or representatives who shall violate any of the provisions of sections 9-914 to 9-919, inclusive, or make any false statement appearing on said sign, contract, agreement, receipt, statement, literature or other publication shall be guilty of a misdemeanor.

History: En. Sec. 108, Ch. 35, L. 1949.

9-921. Investment of fund. The endowment care funds shall be invested, reinvested and kept invested in securities which are legal investments for trust funds under the laws of the state of Montana, in improved income-producing real estate in the state of Montana, or in first mortgages or deeds of trust on improved income-producing real estate in the state of Montana not exceeding in amount sixty per cent (60%) of the appraised value of such real estate at the time such mortgage or deed of trust is created or at the time such mortgage or deed of trust is purchased by the trustees.

History: En. Sec. 109, Ch. 35, L. 1949.

9-922. Acceptance of bequests. A mausoleum-columbarium authority which has established endowment care may also take and hold any property bequeathed, granted or given to it in trust to apply the principal, or proceeds, or income to either or all of the following purposes:

(a) Improvement or embellishment of all or any part of the mausoleum or columbarium or any plot in it.

(b) Planting or cultivation of trees, shrubs, or plants in or around any part of the grounds in which the mausoleum-columbarium is situated.

(c) Special care or ornamenting of any part of any plot, section, corridor or other portion of the mausoleum-columbarium.

(d) Any purpose or use not inconsistent with the purpose for which the mausoleum-columbarium was established or is maintained.

History: En. Sec. 110, Ch. 35, L. 1949.

9-923. Contributions are for charitable and eleemosynary purposes—validity of contributions. The sums paid in or contributed to the fund authorized by this act are hereby expressly permitted as and for a charitable and eleemosynary purpose. Such contributions are a provision for the discharge of a duty due from the persons contributing to the person or persons interred or to be interred in the mausoleum-columbarium and likewise a provision for the benefit and protection of the public by preserving, beautifying, and keeping mausoleums and columbariums from becoming unkept and place of reproach and desolation in the communities in which they are situated. No payment, gift, grant, bequest, or other contribution for such purpose is invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating the fund, nor is the fund or any contribution to it invalid as violating any law against perpetuities or the suspension of the power of alienation of title to property.

History: En. Sec. 111, Ch. 35, L. 1949.

Collateral References
Perpetuities⇐4 (1), 6 (1).

9-924. Director or officer not to borrow funds. No director or officer of the mausoleum-columbarium authority or trustee of the endowment care or special care funds shall borrow any endowment care or special care funds of the corporation for himself, directly or indirectly.

History: En. Sec. 112, Ch. 35, L. 1949.

9-925. Existing operators becoming subject to act—delivery of funds. Any person, firm or corporation heretofore operating a mausoleum or columbarium which shall become subject to this act and who shall have collected endowment care funds to be used in connection therewith shall, within ninety (90) days after such mausoleum or columbarium becomes subject to this act, deliver to the trustees of the endowment care fund of the mausoleum-columbarium authority in control of such mausoleum or columbarium, all such endowment care funds theretofore collected or received by it and upon such delivery such person, firm or corporation shall be relieved of all further responsibility in connection therewith.

History: En. Sec. 113, Ch. 35, L. 1949.

9-926. Officer or director violating act—vacancy. The office of any director or officer who acts or permits action contrary to this act immediately thereupon becomes vacant.

History: En. Sec. 114, Ch. 35, L. 1949.

9-927. Officer or director authorizing or consenting to loan—misdemeanor. Every director or officer authorizing or consenting to a loan, and the person who receives a loan, in violation of this article are severally guilty of a misdemeanor.

History: En. Sec. 115, Ch. 35, L. 1949.

CHAPTER 10

MAUSOLEUMS AND COLUMBARIUMS—PENALTIES AND MISCELLANEOUS PROVISIONS

Section 9-1001. Removal of remains with intent to sell or dissect—penalty.
9-1002. Removal of remains without authority—penalty.
9-1003. Attachment of remains—misdemeanor.
9-1004. Destruction or mutilation of mausoleum or columbarium—interference with interment—misdemeanor.
9-1005. Civil liability.
9-1006. Exceptions from violation of preceding sections.
9-1007. Converted or altered building subject to act.
9-1008. Requirements as to construction or alteration of buildings.
9-1009. Fireproof construction of crematories—exceptions.
9-1010. Fireproof construction of mausoleums and columbariums.
9-1011. Construction to comply with city ordinances.
9-1012. Violations of act a misdemeanor.
9-1013. Construction in violation of act a public nuisance—penalty.
9-1014. Exceptions from act.

9-1001. Removal of remains with intent to sell or dissect—penalty. Every person who removes any part of any human remains from any place where it has been interred in a mausoleum or columbarium, or from any place where it is deposited while awaiting interment in a mausoleum or columbarium, with intent to sell it, or to dissect it, without authority of law, or from malice or wantonness, shall be punished by imprisonment in the state penitentiary for not more than five (5) years, or by a fine of not more than one thousand dollars ($1,000.00), or by both.

History: En. Sec. 20, Ch. 35, L. 1949.

Collateral References

Cemeteries⇨22.
14 C.J.S. Cemeteries § 37.

9-1002. Removal of remains without authority—penalty. Every person who mutilates, disinters, or removes from the place of interment in a mausoleum or columbarium any human remains without authority of law, shall be punished by imprisonment in the state penitentiary for not more than three (3) years, or by a fine of not more than one thousand dollars ($1,000.00), or by both.

History: En. Sec. 21, Ch. 35, L. 1949.

Collateral References

Cemeteries⇨22.
14 C.J.S. Cemeteries § 37.

9-1003. Attachment of remains—misdemeanor. Every person who arrests, attaches, detains, or claims to detain any human remains for any debt or demand, or upon any pretended lien or charge, is guilty of a high misdemeanor.

History: En. Sec. 22, Ch. 35, L. 1949.

Collateral References

Cemeteries⇨22.
14 C.J.S. Cemeteries § 37.

9-1004. Destruction or mutilation of mausoleum or columbarium—interference with interment—misdemeanor. Every person is guilty of a high misdemeanor who unlawfully or without right willfully does any of the following:

(a) Destroys, cuts, mutilates, effaces, or otherwise injures, tears down or removes any crypt, niche, monument, memorial or marker in a mauso-

leum or columbarium, or any gate, door, fence, wall, post or railing, or any inclosure for the protection of a crypt or niche or any other property in a mausoleum or columbarium.

(b) Destroys, cuts, breaks, removes or injures any building, statuary, ornamentation, tree, shrub, flower or plant within a mausoleum or columbarium or within the limits of any grounds within which such mausoleum or columbarium is located.

(c) Disturbs, obstructs, detains or interferes with any person carrying or accompanying human remains to a mausoleum or columbarium, or funeral establishment, or engaged in a funeral service, or an interment.

History: En. Sec. 30, Ch. 35, L. 1949.

Collateral References
Cemeteries⇐22.
14 C.J.S. Cemeteries § 37.

9-1005. Civil liability. Any person violating any provision of section 9-1004 is liable, in a civil action by and in the name of the mausoleum-columbarium authority to pay all damages occasioned by his unlawful acts. The sum recovered shall be applied in payment for the repair and restoration of the property injured or destroyed.

History: En. Sec. 31, Ch. 35, L. 1949.

Collateral References
Cemeteries⇐20.
14 C.J.S. Cemeteries § 36.

9-1006. Exceptions from violation of preceding sections. The provisions of section 9-1004 do not apply to the removal or unavoidable breakage or injury, by a mausoleum-columbarium authority of anything placed in or upon any portion of its mausoleum or columbarium, or the grounds within which the same are situated, in violation of any of the rules or regulations of the mausoleum-columbarium authority, nor to the removal or anything placed in said mausoleum or columbarium or the grounds within which the same are situated, by or with the consent of the mausoleum-columbarium authority which has become in a wrecked, unsightly or dilapidated condition.

History: En. Sec. 32, Ch. 35, L. 1949.

9-1007. Converted or altered building subject to act. A building not erected for, or which is not used as, a place of interment of human remains which is converted or altered for such use by a mausoleum-columbarium authority is subject to this act.

History: En. Sec. 116, Ch. 35, L. 1949.

Collateral References
Cemeteries⇐1.
14 C.J.S. Cemeteries § 2.

9-1008. Requirements as to construction or alteration of buildings. No building or structure intended to be used for the interment of human remains shall be constructed, and a building not used for the interment of human remains shall not be altered for use or used for interment purposes, unless constructed of such material and workmanship as will ensure its durability and permanence as dictated and determined at the time by modern mausoleum construction and engineering science.

History: En. Sec. 117, Ch. 35, L. 1949.

Collateral References
Cemeteries⇐1.
14 C.J.S. Cemeteries § 2.

9-1009. Fireproof construction of crematories—exceptions. No crematory shall hereafter be constructed or established by a mausoleum-columbarium authority unless the crematory is of fireproof construction and there is in connection therewith either a fireproof columbarium or a fireproof mausoleum, amply equipped at all times for the interment of remains of bodies cremated at the crematory and a fireproof room for temporary care of cremated remains. Nothing herein contained shall prevent existing crematories from being repaired, altered or reconstructed. Nothing in this act shall prohibit the cremation of human remains in existing crematories or the temporary storage of cremated remains.

History: En. Sec. 50, Ch. 35, L. 1949.

9-1010. Fireproof construction of mausoleums and columbariums. All mausoleums or columbariums hereafter constructed shall be of class "A" fireproof construction.

History: En. Sec. 118, Ch. 35, L. 1949.

9-1011. Construction to comply with city ordinances. If the proposed site is within the jurisdiction of a city having ordinances and specifications governing class "A" construction, the provisions of the local ordinances and specifications shall not be violated.

History: En. Sec. 119, Ch. 35, L. 1949.

9-1012. Violations of act a misdemeanor. Every person who violates any provision of this act is guilty of a misdemeanor, and in addition is liable for all costs, expenses, and disbursements paid or incurred by a person prosecuting the case.

History: En. Sec. 120, Ch. 35, L. 1949.

Collateral References
Cemeteries⇐22.
14 C.J.S. Cemeteries § 37.

9-1013. Construction in violation of act a public nuisance—penalty. Every owner or operator of a mausoleum or columbarium erected in violation of this act is guilty of maintaining a public nuisance and upon conviction is punishable by a fine of not less than five hundred dollars ($500.00) nor more than five thousand dollars ($5,000.00) or by imprisonment in a county jail for not less than one (1) month nor more than six (6) months, or by both; and, in addition is liable for all costs, expenses and disbursements paid or incurred in prosecuting the case. The costs, expenses and disbursements shall be fixed by the court having jurisdiction of the case.

History: En. Sec. 121, Ch. 35, L. 1949.

Collateral References
Nuisance⇐61.
66 C.J.S. Nuisance § 42.

9-1014. Exceptions from act. The provisions of this act relating to private mausoleums and columbariums do not apply to any of the following:

(a) Any religious corporation, church, religious society or denomination, corporation sole administering temporalities of any church or religious society or denomination, or any cemetery, mausoleum or columbarium organized, controlled, and operated by any of them.

(b) Any county, town or city cemetery, mausoleum or columbarium.

(c) Provided, however, that no condition or section or provision of this act shall or may be so construed or interpreted as to apply to any act or in any way pertain to or affect any Montana mausoleum corporation now in existence, operating under Montana charter dated prior to the year 1920 A. D.

History: En. Sec. 122, Ch. 35, L. 1949.

TITLE 10

CHILDREN AND CHILD WELFARE

Chapter 1. Children's center, Repealed—Section 2, Chapter 181, Laws of 1949; Section 82, Chapter 266, Laws of 1963; Section 101, Chapter 199, Laws of 1965.
2. Child labor—prohibitions, 10-201 to 10-210.
3. Apprenticing of minors, 10-301 to 10-310.
4. Division of maternal and child health of state board of health, Repealed—Section 28, Chapter 264, Laws of 1955.
5. Dependent and neglected children—proceedings for protection, 10-501 to 10-525.
6. Juvenile courts and proceedings against juvenile delinquents, 10-601 to 10-633.
7. Child adoption agencies, 10-701 to 10-706.
8. Day care facilities for children, 10-801 to 10-811.
9. Reports of child neglect or abuse, 10-901 to 10-905.
10. Interstate compact on juveniles, 10-1001 to 10-1006.

CHAPTER 1

CHILDREN'S CENTER

(Repealed—Section 2, Chapter 181, Laws of 1949; Section 82, Chapter 266, Laws of 1963; Section 101, Chapter 199, Laws of 1965)

10-101, 10-101.1 to 10-125. (1484 to 1500, 1503 to 1510) **Repealed.**

Repeal

These sections (Secs. 1, 2, 22, 25, pp. 189, 190, 193, 194, L. 1893; Secs. 2470, 2471, 2480 to 2482, 2486, 2488, 2491, 2494, Pol. C. 1895; Secs. 1, 4 to 7, Ch. 40, L. 1903; Secs. 1 to 4, Ch. 133, L. 1911; Secs. 1 to 6, Ch. 162, L. 1919; Sec. 1, Ch. 68, L. 1921; Secs. 1, 2, Ch. 82, L. 1929; Secs. 1 to 5, Ch. 198, L. 1935; Sec. 1, Ch. 19, L. 1959; Sec. 1, Ch. 128, L. 1963; Sec. 7, Ch. 213, L. 1963; Secs. 69 to 77, Ch. 266, L. 1963), relating to the institution located at Twin bridges, were repealed by Sec. 2, Ch. 181, Laws 1949; Sec. 82, Ch. 266, Laws 1963; Sec. 101, Ch. 199, Laws 1965. For present law, see secs. 80-2101 to 80-2107 and 80-2213.

CHAPTER 2

CHILD LABOR—PROHIBITIONS

Section 10-201. Employment of children under sixteen years in certain occupations prohibited.
10-202. Liability of parent.
10-203. Record of children under the age of sixteen years.
10-204. Age certificates.
10-205. Enforcement of act.
10-206. Penalties.
10-207. Prohibiting employment of children in mines.
10-208. Employment of a child in a mine—penalty.
10-209. Parent permitting employment guilty of misdemeanor.
10-210. Penalties.

10-201. (3095) **Employment of children under sixteen years in certain occupations prohibited.** Any person, company, firm, association, or corporation engaged in business in this state, or any agent, officer, foreman, or other employee having control or management of employees, or having the power to hire or discharge employees, who shall knowingly employ or

permit to be employed any child under the age of sixteen years, to render or perform any service or labor, whether under contract of employment or otherwise, in, on, or about any mine, mill, smelter, workshop, factory, steam, electric, hydraulic, or compressed-air railroad, or passenger or freight elevator, or where any machinery is operated, or for any telegraph, telephone, or messenger company, or in any occupation not herein enumerated which is known to be dangerous or unhealthful, or which may be in any way detrimental to the morals of said child, shall be guilty of a misdemeanor and punishable as hereinafter provided.

History: En. Sec. 1, Ch. 99, L. 1907; Sec. 1746; Rev. C. 1907; re-en. Sec. 3095, R. C. M. 1921.

Cross-References

Bartenders, waiters and waitresses, age of employment, secs. 41-1135, 41-1136.

Department of labor and industry to enforce laws relating to child labor, sec. 41-1605.

Employment of children during school term, sec. 75-2902.

Construction

Construing this section, which prohibits the employment of children under the age of sixteen years in certain specified occupations, closing with the words "or in any occupation not herein enumerated which is known to be dangerous," held, that by the latter clause a separate class of occupations is designated, independent of and in addition to those therefore specifically named, and that such occupations may not, under the ejusdem generis rule, be held to mean occupations of the same kind and character as those previously enumerated. Burk v. Montana Power Co., 79 M 52, 63, 255 P 337, distinguished in 114 M 323, 326, 136 P 2d 748.

Defenses Not Available

In an action such as this the defenses of contributory negligence and assumption of risk are not available. Daly v. Swift & Co., 90 M 52, 61, 300 P 265, distinguished in 114 M 323, 325, 136 P 2d 748.

Immunity of Employer under Workmen's Compensation Act

Where a thirteen-year-old girl, unlawfully employed as operator of a passenger elevator, was killed in the performance of her duties, and had failed to serve upon the employer a written notice of her election not to be bound by Workmen's Compensation Act under sections 92-203 and 92-204, she being an "employee" under section 92-411 expressly including minors "whether lawfully or unlawfully employed," held, that her insured employer was immune from common-law or statutory suits for damages brought by her mother as administratrix. Tarrant v. Helena Bldg. & Realty Co., 116 M 319, 322, 156 P 2d 168.

Invalidity of Act as to Dangerous Occupations Not Specifically Enumerated

Where the legislature undertakes to define a new offense the statute must be so explicit that all persons subject to its penalty may know what acts to avoid, and that under that rule the provision of this section making it a misdemeanor to employ a child under the age of sixteen years "in any occupation * * * known to be dangerous," is so uncertain as to the kind and nature of occupations intended to come within the prohibited class, as to render it void. Burk v. Montana Power Co., 79 M 52, 63, 255 P 377, distinguished in 114 M 323, 334, 136 P 2d 748.

Courts cannot take judicial notice of the fact that a given employment not enumerated in this section, is an occupation know to be dangerous within the meaning of the Child Labor Law. Burk v. Montana Power Co., 79 M 52, 63, 255 P 337.

In an action for personal injuries sustained by a minor under the age of sixteen years while employed in driving a team in logging operations, who, though compensated for the injuries under the Workmen's Compensation Act, based his action on the common-law liability of his employer on the theory that his employment was unlawful under the Child Labor Law and therefore he was not bound by the Workmen's Compensation Act, it was held that the section of the Child Labor Law so far as it appertains to occupations not specifically named is void, that plaintiff's contention as to the illegality of his employment cannot be sustained. Burk v. Montana Power Co., 79 M 52, 63, 255 P 337, distinguished in 114 M 323, 334, 136 P 2d 748.

Laws which create crime must be so explicit that all persons subject to their penalties may know what acts to avoid. Burk v. Montana Power Co., 79 M 52, 63, 255 P 337.

Knowledge

Since a corporation defendant in an action based on a violation of the Child Labor Law can only have vicarious knowledge of any fact, the knowledge of its managing officers that a minor of the prohibited age was being employed in a proscribed labor constitutes the knowledge re-

quired by the act. Daly v. Swift & Co., 90 M 52, 61, 300 P 265.

The fact that a boy under the forbidden age of sixteen years was employed by an independent contractor in making repairs on a freight elevator when injured was immaterial, it having been defendant company's duty, being in full possession of the building and elevator and with knowledge that he was engaged in forbidden labor, to see to it that he was not permitted to continue therein. Daly v. Swift & Co., 90 M 52, 61, 300 P 265.

Negligence Per Se

Violation of the Child Labor Law, though merely penal, forms the basis of an action for damages for injuries to the minor, and the general rule that violation of a statute enacted for the protection of the public is negligence per se applies. Daly v. Swift & Co., 90 M 52, 61, 300 P 265.

"Or Where Any Machinery Is Operated"

Under the ejusdem generis rule, that the legislature, in adding the words "or where any machinery is operated," intended to include all places similar to those specifically enumerated but not all places where machinery was being operated, and that the operation of a threshing machine on a farm, in the feeding of which a minor of fourteen years of age was employed, was not included in the prohibited occupations; hence the defenses of assumption of risk and contributory negligence were available to defendant. Shaw v. Kendall, 114 M 323, 325, 136 P 2d 748.

Penal in Character

This section, making the act of employing a child under the age of sixteen years in certain occupations a misdemeanor and prescribing punishment for a violation thereof, is penal, and not remedial, in character. Burk v. Montana Power Co., 79 M 52, 63, 255 P 337.

Requisites of Complaint for Damages

The complaint in an action by a minor against a railway company to recover damages for personal injuries under this section, making it negligence per se for an employer to hire a child under sixteen years of age, must allege that defendant employed plaintiff knowing him to have been under that age. Fallon v. Chicago, Milwaukee & St. Paul Ry. Co., 61 M 130, 132, 200 P 453.

Complaint in an action to recover damages for the death of a boy under the age of twelve years alleging, inter alia, that defendant company knowingly and negligently permitted the boy to be employed by an independent contractor in and about heavy elevator machinery while being moved, contrary to the provisions of the Child Labor Law (this section), held not open to the objection that it did not state a cause of action in that it showed on its face that deceased was not in the employ of defendant but that of the contractor. Daly v. Swift & Co., 90 M 52, 61, 300 P 265.

The proximate cause of an injury to a minor protected by the Child Labor Law was the fact that he was permitted to work in a forbidden place and not the negligence of the contractor in operating the freight elevator contrary to instructions given him by defendant, which negligence but concurred with that of defendant and could not relieve the latter from liability. Daly v. Swift & Co., 90 M 52, 61, 300 P 265.

References

Flaherty v. Butte Electric Ry. Co., 42 M 89, 95, 111 P 348.

Collateral References

Labor Relations⇐1084, 1359.

56 C.J.S. Master and Servant §§ 152, 155.

31 Am. Jur. 1043, Labor, § 424 et seq.

Constitutionality of child labor laws. 12 ALR 1216 and 21 ALR 1437.

Right of parent who consents to or acquiesces in employment of child under statutory age to recover for latter's injury or death while in such employment. 23 ALR 635 and 40 ALR 1206.

What is a "manufacturing establishment" within the meaning of regulatory statutes. 96 ALR 1351.

Inclusion or exclusion of day of birth in computing age under statute restricting hours of work. 5 ALR 2d 1154.

Child labor as subject of collective bargaining. 12 ALR 2d 280.

Nonprofit charitable institution as within operation of child labor act. 36 ALR 2d 128.

Validity of minimum wage statutes relating to private employment of women and minors. 39 ALR 2d 744.

10-202. (3096) **Liability of parent.** Any parent, guardian, or other person having the care, custody, or control of any child under the age of sixteen years, who shall permit, suffer, or allow any such child to work or perform service for any person, company, firm, association, or corporation doing business in this state, or who shall permit or allow any such child

over whom he has such care, custody, or control to retain such employment as is prohibited in the preceding section whether under contract of employment or not, shall be guilty of a misdemeanor and punishable as hereinafter provided.

History: En. Sec. 2, Ch. 99, L. 1907; Sec. 1747, Rev. C. 1907; re-en. Sec. 3096, R. C. M. 1921.

References

Daly v. Swift & Co., 90 M 52, 63, 300 P 265; Tarrant v. Helena Bldg. & Realty Co., 116 M 319, 321, 156 P 2d 168.

10-203. (3097) **Record of children under the age of sixteen years.** The commissioner of labor and industry shall compile and preserve in his office from reports made to him by the county superintendent of schools, as otherwise provided, a full and complete list of the name, age, date of birth, and sex of each child, and the names of the parents or guardians of each child under the age of sixteen years who is now or may hereafter become a resident of this state, and such list shall be the official record of the age of children in this state.

History: En. Sec. 3, Ch. 99, L. 1907; Sec. 1748, Rev. C. 1907; re-en. Sec. 3097, R. C. M. 1921.

10-204. (3098) **Age certificates.** Upon obtaining the age of sixteen years any child may make application to the commissioner of labor and industry for an age certificate, which must be presented to any employer with whom such child may seek employment. The employer, if such employment be given, must countersign the certificate and return the same to the commissioner of said bureau, who shall keep the same on file in his office. Any person, firm, company, association, or corporation who employs or permits to be employed in any occupation prohibited by section 10-201, any child without such certificate showing the child to be at least sixteen years of age, shall be guilty of a misdemeanor and punishable as hereinafter provided, should such child prove to be less than sixteen years of age.

History: En. Sec. 4, Ch. 99, L. 1907; Sec. 1749, Rev. C. 1907; re-en. Sec. 3098, R. C. M. 1921.

References

Burk v. Montana Power Co., 79 M 52, 63, 255 P 337; Tarrant v. Helena Bldg. & Realty Co., 116 M 319, 321, 156 P 2d 168.

10-205. (3099) **Enforcement of act.** To enforce this act the commissioner of labor and industry, the bureau of child and animal protection, and all county attorneys shall, each upon their own volition, or upon the sworn complaint of any reputable citizen that this act is being violated, make prosecutions for such violations.

History: En. Sec. 5, Ch. 99, L. 1907; Sec. 1750, Rev. C. 1907; re-en. Sec. 3099, R. C. M. 1921.

Compiler's Note

The state department of public welfare successor to the bureau of child and animal protection. See sec. 10-505.

10-206. (3100) **Penalties.** Every person, firm, company, association, or corporation who violates any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars, or

by imprisonment in the county jail for a period of not less than thirty days nor more than six months, or by both such fine and imprisonment.

History: En. Sec. 6, Ch. 99, L. 1907; Sec. 1751, Rev. C. 1907; re-en. Sec. 3100, R. C. M. 1921.

References

Tarrant v. Helena Bldg. & Realty Co., 116 M 319, 321, 156 P 2d 168.

10-207. (3101) **Prohibiting employment of children in mines.** Any person, corporation, stock company, or association of persons, owning or operating any underground mine, or any officer, agent, foreman, or boss, having the control or management of employees, or having the power to hire or discharge employees, who shall employ, or knowingly permit to be employed, any child under the age of sixteen years, for work or service in any such mine, or the underground workings thereof, or permit or allow any such child to render or perform any work or service whatever in such mine, whether under contract of employment or otherwise, shall be guilty of a misdemeanor and punishable as hereinafter provided.

History: En. Sec. 1, Ch. 16, L. 1905; re-en. Sec. 1752, Rev. C. 1907; re-en. Sec. 3101, R. C. M. 1921.

10-208. (3102) **Employment of a child in a mine—penalty.** Every person who receives or employs any child under fourteen years of age in any underground works or mine, or in any similar business, is punishable by a fine not exceeding one thousand dollars.

History: En. Sec. 15, 5th Div. Comp. Stat. 1887; amd. Sec. 474, Pen. C. 1895; re-en. Sec. 8839, Rev. C. 1907; re-en. Sec. 3102, R. C. M. 1921.

10-209. (3103) **Parent permitting employment guilty of misdemeanor.** Any parent, guardian, or other person having the care, custody, or control of any child under the age of sixteen years, who shall permit, suffer, or allow such child to work in any mine having underground workings, or who shall permit or allow any such child over whom they may have such care, custody, or control to retain employment in any such mine, or who, after having knowledge that any such child has taken employment in any such mine, or is performing work or service therein, whether under contract of employment or not, shall fail forthwith to notify the person or corporation owning or operating such mine, or some officer, foreman, or employee thereof having the power to hire or discharge employees, of the age of such child, shall be guilty of a misdemeanor and punishable as hereinafter provided.

History: En. Sec. 2, Ch. 16, L. 1905; re-en. Sec. 1753, Rev. C. 1907; re-en. Sec. 3103, R. C. M. 1921.

10-210. (3104) **Penalties.** Any person or corporation violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period of not less than thirty days nor more than six months, or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 16, L. 1905; re-en. Sec. 1754, Rev. C. 1907; re-en. Sec. 3104, R. C. M. 1921.

CHAPTER 3

APPRENTICING OF MINORS

Section 10-301. Minors may apprentice themselves.
10-302. Consent to indenture of apprenticeship.
10-303. Executors may bind.
10-304. Commissioners may bind.
10-305. Age of apprentice to be inserted in indenture.
10-306. Consideration to be inserted in indenture.
10-307. Other conditions of indenture.
10-308. Deposit of indenture.
10-309. Causes of annulling indenture.
10-310. Indenture to be deposited with county clerk.

10-301. (5890) **Minors may apprentice themselves.** Every minor, with the consent of the persons or officers hereinafter mentioned, may, of his own free will, bind himself, in writing, called an indenture of apprenticeship, to serve as clerk, apprentice, or servant, in any profession, trade, or employment, until his majority, or for any stated time, and such binding shall be as valid and effectual as if such minor was of full age at the time of making the engagement.

History: En. Sec. 360, Civ. C. 1895; re-en. Sec. 3795, Rev. C. 1907; re-en. Sec. 5890, R. C. M. 1921. Cal. Civ. C. Sec. 264.

Collateral References
Apprentices⇨1-8.
6 C.J.S. Apprentices §§ 1, 3, 5-9.

Cross-Reference
Age of minority, sec. 64-101.

10-302. (5891) **Consent to indenture of apprenticeship.** Consent to an indenture of apprenticeship must be given by a certificate at the end thereof, or endorsed thereon, signed:

1. By the father and mother of the apprentice;

2. If the father lacks capacity to consent, or has abandoned or neglected to provide for his family, or is dead, and no testamentary guardian or executor has been appointed by him, with power under the will to bring up the child to a calling, and a certificate of such fact is endorsed on the indenture by a justice of the peace of the town, then by the mother;

3. If the father is dead, and such guardian or executor has been appointed by him, then by such guardian or executor;

4. If the mother is dead, or lacks capacity to consent, then by the father;

5. If there is no parent of capacity to consent, and no such executor, then by the guardian; or,

6. If there is no such parent, executor, or guardian, then by the county commissioners of the county, or by any two justices of the peace of the town, or by the district judge.

History: En. Sec. 361, Civ. C. 1895; re-en. Sec. 3796, Rev. C. 1907; re-en. Sec. 5891, R. C. M. 1921. Cal Civ. C. Sec. 265. Based on Field Civ. C. Sec. 141.

Collateral References
Apprentices⇨6, 8.
6 C.J.S. Apprentices §§ 6, 9.

10-303. (5892) **Executors may bind.** The executors of any last will of a parent, who shall be directed in such will to bring up a child of such parent to some trade or calling, may bind such child to service as a clerk

or apprentice in like manner as the father might have done if living. If there is a surviving mother, her consent also is necessary.

History: En. Sec. 362, Civ. C. 1895; re-en. Sec. 3797, Rev. C. 1907; re-en. Sec. 5892, R. C. M. 1921. Cal. Civ. C. Sec. 265.

10-304. (5893) **Commissioners may bind.** The county commissioners may bind out minors who are or shall become chargeable to such county, to be clerks, apprentices, or servants, which binding shall be as effectual as if such minors had bound themselves with the consent of their father and mother.

History: En. Sec. 363, Civ. C. 1895; re-en. Sec. 3798, Rev. C. 1907; re-en. Sec. 5893, R. C. M. 1921.

10-305. (5894) **Age of apprentice to be inserted in indenture.** The age of every infant so bound shall be inserted in the indentures, and shall be presumed to be the true age, and whenever public officers are authorized to execute any indentures, or their consent is required to the validity of the same, it shall be their duty to inform themselves fully of the infant's age.

History: En. Sec. 364, Civ. C. 1895; re-en. Sec. 3799, Rev. C. 1907; re-en. Sec. 5894, R. C. M. 1921.

10-306. (5895) **Consideration to be inserted in indenture.** Every sum of money paid or agreed for, with or in relation to the binding out of any clerk, apprentice, or servant, shall be inserted in the indenture.

History: En. Sec. 365, Civ. C. 1895; re-en. Sec. 3800, Rev. C. 1907; re-en. Sec. 5895, R. C. M. 1921.

10-307. (5896) **Other conditions of indenture.** The indenture shall also contain an agreement, on the part of the person to whom such child shall be bound, that he will cause such child to be instructed to read and write, and to be taught the general rules of arithmetic, or, in lieu thereof, that he will send such child to school three months of each year of the period of indenture.

History: En. Sec. 366, Civ. C. 1895; re-en. Sec. 3801, Rev. C. 1907; re-en. Sec. 5896, R. C. M. 1921.

10-308. (5897) **Deposit of indenture.** The counterpart of any indenture executed by any county, or city, or town officers, must be by them deposited in the office of the county clerk.

History: En. Sec. 367, Civ. C. 1895; re-en. Sec. 3802, Rev. C. 1907; re-en. Sec. 5897, R. C. M. 1921.

10-309. (5898) **Causes of annulling indenture.** Such indenture of apprenticeship may be annulled:

1. For fraud in the contract of indenture;

2. When such contract is not made or executed in accordance with the provisions of this chapter;

3. For willful nonfulfilment, by such master, of the provisions of such indenture;

4. For cruelty or maltreatment of such apprentice by the master. In such case the apprentice may recover for his services.

History: En. Sec. 368, Civ. C. 1895; re-en. Sec. 3803, Rev. C. 1907; re-en. Sec. 5898, R. C. M. 1921.

Collateral References

Apprentices⇐10.
6 C.J.S. Apprentices § 11.

10-310. (5899) **Indenture to be deposited with county clerk.** In no case shall a minor be bound by an indenture until a duplicate thereof shall have been deposited in the office of the county clerk for the benefit of the minor.

History: En. Sec. 369, Civ. C. 1895; re-en. Sec. 3804, Rev. C. 1907; re-en. Sec. 5899, R. C. M. 1921.

CHAPTER 4

DIVISION OF MATERNAL AND CHILD HEALTH OF STATE BOARD OF HEALTH

(Repealed—Section 28, Chapter 264, Laws of 1955)

10-401 to 10-408. (2503 to 2510) **Repealed.**

Repeal

These sections (Secs. 1 to 8, Ch. 121, L. 1917; Sec. 1, Ch. 22, L. 1945), relating to the division of maternal and child health of state board of health, were repealed by Sec. 28, Ch. 264, Laws 1955.

CHAPTER 5

DEPENDENT AND NEGLECTED CHILDREN—PROCEEDINGS FOR PROTECTION

Section
10-501. Dependent and neglected children—definition.
10-502. Jurisdiction of courts—jury trial.
10-503. Applications to courts with reference to dependent or neglected children.
10-504. Citation and procedure.
10-505. State department of public welfare successor to bureau of child and animal protection.
10-506. Duty of county board to investigate and report, when.
10-507. Hearing of petition—evidence regarding financial ability of parents—court order—allocation of cost.
10-508. Hearing—witnesses—duty of county attorney.
10-509. Commitment of child to children's center or other disposition.
10-510. Committed child becomes ward of custodian.
10-511. Punishment of parents.
10-512. Suspension of sentence.
10-513. Custody of child upon suspension of sentence.
10-514. Forfeiture of bonds and termination of suspended sentence on breach of conditions.
10-515. Actions on bonds.
10-516. Act to be construed liberally.
10-517. Saving clause.
10-518. Jurisdiction of justices' courts.
10-519. Transportation to homes without the state—authorization—expense.
10-520. Foster or boarding home operator defined.
10-521. License required.
10-522. Issuance of license—authority of issuing agency.
10-523. Penalty.

10-524. Payment for board and room of dependent and neglected children—reimbursement by county.
10-525. Recovery from parents—division between state and county.

10-501. (10465) **Dependent and neglected children—definition.** For the purpose of this act, the words "dependent child" or "neglected child" shall mean any child of the age of sixteen years, or under that age, who is dependent upon the public for support, and who is destitute, homeless, or dependent, or who has no proper parental care or guardianship, or who habitually begs or receives alms, or who is found living in any house of ill-fame, or in any house of prostitution, or whose home, by reason of neglect, cruelty, or depravity on the part of its parents, guardian, or other person in whose care it may be, is an unfit place for such child, or whose environment is such as to warrant the state, in the interest of the child, to assume its guardianship or support.

History: En. Sec. 1, Ch. 92, L. 1907; Sec. 7829, Rev. C. 1907; re-en. Sec. 10465, R. C. M. 1921.

Cross-References

Admission of minors to places of prostitution, penalty, sec. 94-35-137.

Admission of minors to public dance halls, penalty, sec. 94-35-138.

Aid to dependent children, secs. 71-501 to 71-510.

Application of Montana Rules of Civil Procedure to this chapter, see M. R. Civ. P., Rule 81(a), Table A.

Beer not to be sold or given to minor, secs. 4-337, 4-345.

Civil liability, damages, sec. 64-113.

Contracts for necessaries, sec. 64-108.

Firearms, use prohibited, sec. 94-3579.

Intoxicating liquor not to be sold or given to, secs. 4-161, 4-413, 94-35-106.

Minors not to frequent pool halls, sec. 94-4004.

Obscene literature, selling or giving to minor, penalty, secs. 94-3601, 94-3602.

Parents' duties and obligations, sec. 61-101 et seq.

Possession of beer or liquor by minor, misdemeanor, sec. 94-35-106.2.

Tobacco, selling to minor, penalty, sec. 94-35-208.

"Dependent" and "Neglected" Distinguished

Under this act, a "dependent child" is one who must be supported by someone other than its natural or legal guardians, while a "neglected child," which is a broader term, describes a situation where there has been parental failure to exercise the degree of care demanded by family circumstances. In re Vikse, 147 M 417, 413 P 2d 876.

Unfit Parents

Parents who beat one of two adopted children were not fit and proper parents within the meaning of this section and could be deprived of both children. In re Phelps, 145 M 557, 402 P 2d 593.

References

Kelly v. Independent Publishing Co., 45 M 127, 141, 122 P 735; Application of Banschbach, 133 M 312, 323 P 2d 1112, 1113.

Collateral References

Infants⇦16.2, 16.3; Social Security and Public Welfare⇦194.

43 C.J.S. Infants § 97 et seq.; 81 C.J.S. Social Security and Public Welfare § 63.

31 Am. Jur. 790, Juvenile Courts and Delinquent, Dependent, and Neglected Children, § 15 et seq.

Constitutionality of statute as affected by discrimination in punishments for same offense based upon age, color, or sex. 3 ALR 1614 and 8 ALR 854.

10-502. (10466) **Jurisdiction of courts — jury trial.** The district courts in the several counties in the state shall have original jurisdiction in all cases coming within the terms of this act. In all trials under this act, any person interested therein may demand a jury, or the judge of his own motion may order a jury to try the case. Any person interested in any cause under this act shall have the right to appear therein and be represented by counsel; all cases within the provisions of this act shall be known as "juvenile cases."

History: En. Sec. 2, Ch. 92, L. 1907; Sec. 7830, Rev. C. 1907; re-en. Sec. 10466, R. C. M. 1921.

Collateral References

Jury⇐19 (1).

50 C.J.S. Juries § 68.

31 Am. Jur. 796, Juvenile Courts and Delinquent, Dependent and Neglected Children, § 24 et seq.

10-503. (10467) **Applications to courts with reference to dependent or neglected children.** Any officer of the state bureau of child and animal protection, or any person who is a resident of the county, having knowledge of a child in his county who appears to be a dependent or neglected child, may file with the clerk of the district court a petition in writing, setting forth the facts which constitute the child dependent or neglected, which petition shall be verified by an affidavit of the petitioner. It shall be sufficient if the affidavit is upon information and belief. The court may, upon its own motion, or on the application of any person interested, require that such petition set forth an additional information as to the parentage or relatives of such child, or the cause of its dependency, as to the court may seem necessary and proper to the ends of justice, or the proper disposition of any such case; provided, however, that when any such child, within the provisions of this act, is in immediate or apparent danger of violence or serious injury, or is apt to be removed from the jurisdiction of the court for the purpose of evading proceedings under this act for its protection, any officer of the state bureau of child and animal protection, or any sheriff, may take immediate custody of such child without any process whatever; but, in any such case, it shall be the duty of said officer, within forty-eight hours thereafter, to file a petition and proceed as herein provided for. In any such case, the court may provide for the temporary care and custody of such child pending the final hearing and disposition of such case.

History: En. Sec. 3, Ch. 92, L. 1907; Sec. 7831, Rev. C. 1907; re-en. Sec. 10467, R. C. M. 1921.

Compiler's Note

State department of public welfare successor to the bureau of child and animal protection. See sec. 10-505.

Residence of Petitioner

Since the court's jurisdiction had to be determined as of the time a proceeding was commenced, the issue of the petitioner's residence did not become moot even though the petitioner had established the necessary residence since the hearing in the proceeding. State ex rel. Cowan v. District Court, 131 M 502, 312 P 2d 119, 123.

The word "resident" as used in this section must denote one actually domiciled within the county and in a proceeding to have a child declared dependent and neglected, where the petitioner was not a resident of the county where the child resided, the court was without jurisdiction to proceed. State ex rel. Cowan v. District Court, 131 M 502, 312 P 2d 119, 122, 123.

Where petitioner was not domiciled, and thus not a resident of the county where the child resided, the court was without power to attempt to confer jurisdiction by an amendment to conform to the alleged proof that petitioner was domiciled in such county. State ex rel. Cowan v. District Court, 131 M 502, 312 P 2d 119, 123.

Collateral References

Infants⇐16.6.

43 C.J.S. Infants § 99.

31 Am. Jur. 800, Juvenile Courts and Delinquent, Dependent and Neglected Children, § 32 et seq.

10-504. (10468) **Citation and procedure.** Upon the filing of such petition, if it shall appear that one or both of said parents, or guardian, if there be no parent, reside in said county, the judge of said court shall issue a citation fixing the day and time of hearing of such petition, which

shall be served upon one or both of said parents or guardian, if any, if either can be found in said county, not less than two (2) days before the time fixed for said hearing, requiring them to appear on said day and hour and show cause, if any, why said child should not be declared, by said court, to be a dependent or neglected child, and sent to the Montana children's center, or otherwise cared for. In case it shall appear by said petition that neither of said parents is living, or does not reside in said county, or in case one or both of said parents, or guardian, in case there be no parents, shall endorse on said petition a request that the child be declared to be a dependent child, then the citation herein provided for need not be issued, and the court may thereupon proceed to the examination and hearing provided for; provided, however, that in all cases, except where the proceeding is instituted or commenced by a representative of the division of child welfare service of the state department of public welfare, a citation must be issued and served upon a representative of the division of the child welfare service of the department of public welfare of the state of Montana, either personally or by mail. It shall be the duty of the officer receiving such citation to use diligence to find and serve the same on one or both of said parents, or upon the guardian, who shall represent such child in court; and in case there is neither of these found, then the court shall appoint an officer of the division of child welfare service, or some responsible taxpayer of said county, to represent said child in court, and the court may also appoint an attorney to represent said child. In case one or both of said parents of such child appear in court, it shall be the duty of the district judge to explain to the one so appearing the effect of an order of court, sending their child to the state home, or declaring it to be a dependent child. In case any dependent child is taken away from its parents or guardian under the provisions of this act, such parents or guardian shall thereafter have no right over or to the custody, service, or earnings of said child, except upon condition, in the interest of such child, as the court may impose or where, upon proper proceedings, such child may lawfully be restored to the parents or guardian.

History: En. Sec. 4, Ch. 92, L. 1907; Sec. 7832, Rev. C. 1907; re-en. Sec. 10468, R. C. M. 1921; amd. Sec. 1, Ch. 209, L. 1947; amd. Sec. 80, Ch. 199, L. 1965.

Cross-Reference

Montana children's center, secs. 80-2101 to 80-2107.

Jurisdiction Based on Service

The district court lacked jurisdiction to find a minor child dependent and neglected and to award her to the care of the child welfare service when service of citation was by publication and there was no service of notice of the action on the father who was a resident of the county. In re Young, 143 M 230, 388 P 2d 379.

References

State ex rel. Cowan v. District Court, 131 M 502, 312 P 2d 119, 121.

Collateral References

Necessity of service of process upon infant itself in juvenile delinquency and dependency proceedings. 90 ALR 2d 293.

10-505. State department of public welfare successor to bureau of child and animal protection. The state department of public welfare, being the successor to the former state bureau of child and animal protection, and being required to perform the duties performed by such bureau while the same was in existence, wherever the terms "bureau of child and animal

protection" or "bureau of child protection" appear or are used in sections 10-501 to 10-519, inclusive, they shall be deemed and construed to mean the state department of public welfare.

History: En. Sec. 1, Ch. 145, L. 1943.

References

State ex rel. Cowan v. District Court, 131 M 502, 312 P 2d 119, 121.

10-506. Duty of county board to investigate and report, when. Whenever any petition is filed with the clerk of a district court in accordance with the provisions of section 10-503, and after citation has been issued as provided in section 10-504, the clerk of such court must immediately deliver to the county board of public welfare of the county in which the petition is filed, a copy of such petition with a notation thereon giving the day and time fixed by the court for hearing such petition. Upon receipt of such copy of petition it shall be the duty of some member of the staff of such county board of public welfare to make an investigation for the purpose of ascertaining whether the parents or parent, if any, of such child live within such county and the financial ability of such parents or parent, if any, to pay the cost of taking care of such child in a foster home, and must file with the clerk of such court, before the time fixed for such hearing, a written report of such investigation.

History: En. Sec. 2, Ch. 145, L. 1943; amd. Sec. 78, Ch. 199 L. 1965.

Ability To Support Child

Since ability of parents to support children was not determined in compliance with this section and section 10-507, but was left to testimony to be elicited at a later hearing, order compelling parents to pay support costs in action depriving them of the children under section 10-501 was set aside. In re Phelps, 145 M 557, 402 P 2d 593.

10-507. Hearing of petition—evidence regarding financial ability of parents—court order—allocation of cost. On the hearing the court may hear evidence regarding the financial ability of any such parents or parent, to pay such cost, and may take into consideration the report of such investigation filed with the clerk of the court, as provided in section 10-506. And if, on such hearing, the court shall find and determine that said child has parents, or a parent, who is financially able to pay a part or the whole of such cost, and such child shall be ordered placed in a foster home, the court shall make an order requiring such parents, or parent, to pay therefor such amount as the court may deem proper.

If such child be placed in a foster home the state department of public welfare shall pay one-half (½) of the cost thereof, and the county in which such child resides shall pay the other one-half (½) thereof, and in turn shall collect in its own name from any parent or parents such amount, if any, as the court has specified in its order to be paid by such parent or parents, provided that one-half (½) of any amount collected by the county from a parent or parents, when a child is placed in a foster home, shall be transmitted to the state department of public welfare, and by it paid over to the state treasurer, who shall deposit the same to the credit of the state general fund.

History: En. Sec. 3, Ch. 145, L. 1943; amd. Sec. 1, Ch. 170, L. 1961; amd. Sec. 79, Ch. 199, L. 1965.

Cross-Reference

Education of child, liability of parent, sec. 36-109.

Ability To Support Child

Since ability of parents to support children was not determined in compliance with this section and section 10-506, but was left to testimony to be elicited at a later hearing, order compelling parents to pay support costs in action depriving them of the children under section 10-501 was set aside. In re Phelps, 145 M 557, 402 P 2d 593.

10-508. (10469) **Hearing—witnesses—duty of county attorney.** On such hearing or examination, the child shall be brought before said court, whereupon it shall be the duty of said court to investigate the facts and ascertain whether said child is a dependent child, its residence, and, as far as possible, the whereabouts of the parents, guardian, or nearest adult relatives; when and how long the child has been maintained, in whole or in part, by public or private charity; the occupation of the parents, if living; whether they are supported by the public, or have abandoned their child; and to ascertain, as far as possible, if the child is found dependent, the cause thereof. The court may compel the attendance of witnesses upon such examination; and it shall be the duty of the county attorney of the county, when requested by the court, to appear in any such examination in behalf of the petitioner. It shall be the duty of the county attorney, upon the request of the court, or any petitioner, to file petitions and conduct the necessary proceedings in any case within the terms of this act. Any friend of the child may appear in its behalf.

History: En. Sec. 5, Ch. 92, L. 1907; Sec. 7833, Rev. C. 1907; re-en. Sec. 10469, R. C. M. 1921.

Collateral References

District and Prosecuting Attorneys⇦8; Infants⇦16.

27 C.J.S. District and Prosecuting Attorneys §§ 10, 14; 43 C.J.S. Infants §§ 8, 93, 98, 100.

31 Am. Jur. 804, Juvenile Courts and Delinquent, Dependent, and Neglected Children, § 38.

10-509. (10470) **Commitment of child to children's center or other disposition.** Upon the hearing of any such case, if the said child shall be found to come within any of the provisions of section 10-501, it shall be deemed a dependent or neglected child, and an order may be entered committing it to the Montana children's center; and if said center is unable to receive said child, or if, from any other reason, it shall appear to be to the best interest of said child, the court may make such disposition of said child as seems best for its social and physical welfare. The form of commitment shall be as follows:

ORDER OF COMMITMENT

State of Montana, County of ....., ss:

In the District Court for the ..... judicial district.

On the ..... day of ....., 19....., ... a minor of this county was charged on the petition of ....., the County Attorney of ..... county, with being a dependent and neglected child under the provisions of chapter 5, Title 10, R. C. M. 1947. Upon due proof I find that it is for the best interests of the child that he be taken from the custody of his parents, guardian, or other person having custody of him.

The names, addresses and occupations of the parents are:

Name	Address	Occupation
.....	.....	.....
.....	.....	.....

The child's guardian is.....
The child is in the custody of .....
It is ordered that ..... be committed to .....
.....
..... until discharged as provided by law.
Witness my hand this ..... day of ..... A. D. 19.....

.....
Judge

History: En. Sec. 6, Ch. 92, L. 1907; Sec. 7834, Rev. C. 1907; re-en. Sec. 10470, R. C. M. 1921; amd. Sec. 81, Ch. 199, L. 1965.

Cross-Reference

Montana children's center, secs. 80-2101 to 80-2107.

Collateral References

Asylums⇨3; Infants⇨16.11.

7 C.J.S. Asylums § 5; 43 C.J.S. Infants § 100.

31 Am. Jur. 793, Juvenile Courts and Delinquent, Dependent and Neglected Children, §§ 20-23.

Right of one in whose custody a child has been placed by society to retain custody as against society or privy. 80 ALR 1129.

10-510. (10471) **Committed child becomes ward of custodian.** In any case where the court shall award any dependent child to the care and custody of an association or individual, in accordance with the provisions of this act, the child shall, unless otherwise ordered, become a ward, and be subject to the guardianship of the association or individual to whose care it is committed. Such association or individual shall, by and with the consent of the court, have authority to place such child in a suitable family home, with or without any indenture, and may, by attorney or agent, appear in any court, where adoption proceedings are pending, and assent to its adoption. Such assent shall be sufficient to authorize the court to enter the proper order or decree of adoption. The guardianship provided for herein shall not include the guardianship of any estate of the child. Any association or individual receiving the care, custody, and guardianship of any such child shall be subject to visitation or inspection by the state bureau of child and animal protection, or any officer or person appointed by the court for such purpose, and the court may, at any time, require from such association or person a report or reports containing such information or statements as to the judge may seem proper and necessary to be fully advised as to the care, maintenance, moral, or physical training of the child, as well as the standing or ability of such association or individual to care for such child. The court may change the guardianship of such child, if, at any time, it is made clear to the court that the same is detrimental to the child, or unsatisfactory to the court. In providing guardianship under the terms of this act for any dependent child, the court may, as far as practicable, provide such guardianship as conforms to the religious faith of the parents of the child. If, in the opinion of the court, the causes of dependency of any child may be removed under such conditions or supervision for its care, protection, and maintenance as may be imposed by the court, so long as it may be for its best interest, the child

may be permitted to remain in its own home and under the control of its own parents, parent, or guardian, subject to the jurisdiction and direction of the court, the condition imposed, and reasonable visitation of the officer, or person appointed by the court for that purpose. When necessary, and when it shall appear to the court that it is no longer to the interest of such child to remain with such parent, parents, or guardian, the court may proceed with the final disposition of the case.

History: En. Sec. 7, Ch. 92, L. 1907; Sec. 7835, Rev. C. 1907; re-en. Sec. 10471, R. C. M. 1921.

Compiler's Note

State department of public welfare successor to state bureau of child and animal protection. See sec. 10-505.

References

Kelly v. Independent Publishing Co., 45 M 127, 141, 122 P 735; In re Vikse, 147 M 417, 413 P 2d 876.

10-511. (10472) **Punishment of parents.** In all cases where any child shall be a "dependent child" or a "neglected child," as defined by the statutes of this state, or by this act, the parent or parents, guardian, or other person or persons responsible in law for its care, custody, maintenance, or support, who shall by any act cause, contribute to, or encourage such dependency, or who shall, by failing, refusing, or neglecting without legal excuse or good cause, to care for, maintain, support, guard, and protect, contribute to, cause, permit, the delinquency or neglect of such child, or who shall, by reason of failing, refusing, or neglecting to do and perform any of his or her or their legal duties or obligations to such child, cause, encourage, or contribute to the neglect or to the delinquency of such child, shall be guilty of a misdemeanor, and, upon trial and conviction thereof, shall be fined in a sum not exceeding six hundred dollars, or imprisoned in the county jail for a period not exceeding nine months, or by both such fine and imprisonment.

History: En. Sec. 8, Ch. 92, L. 1907; Sec. 7836, Rev. C. 1907; re-en. Sec. 10472, R. C. M. 1921.

Cross-Reference

Desertion or abandonment, penalty, sec. 94-304.

Divorce—Power of Court

A court which severs the marriage ties by granting a valid decree of divorce possesses the necessary power to compel the ex-husband to support his minor children. State ex rel. Lay v. District Court, Fourth Judicial District, Ravalli County, 122 M 61, 198 P 2d 761, 767.

Collateral References

Infants⇐20.
43 C.J.S. Infants § 16.

Failure to provide medical attention for child as criminal neglect. 12 ALR 2d 1047.

What constitutes abandonment or desertion of child by its parent or parents within purview of adoption laws. 35 ALR 2d 662.

10-512. (10473) **Suspension of sentence.** The court may suspend any sentence hereunder, or release any person sentenced under this act from custody, upon condition that such person shall furnish a good and sufficient bond or undertaking to the state of Montana, in such penal sum, not exceeding two thousand dollars, as the court shall determine, conditioned for the payment of (1) such amount as the court may order, not exceeding twenty-five dollars per month for each child, for the support, care, and maintenance of such child while under the guardianship or in the custody of any individual or any public, private, or state home, insti-

tution, association, or orphanage, other than an institution in the department of institutions, to which the child may have been committed or entrusted under the provisions of the law of the state concerning dependent and neglected children, or (2) the per diem charge established by the department of institutions for each child committed to the Montana children's center.

History: En. Sec. 9, Ch. 92, L. 1907; Sec. 7837, Rev. C. 1907; re-en. Sec. 10473, R. C. M. 1921; amd. Sec. 82, Ch. 199, L. 1965.

Cross-Reference

Montana children's center, secs. 80-2101 to 80-2107.

Collateral References

Criminal Law⇐1001.
24 C.J.S. Criminal Law §§ 1615, 1618.

10-513. (10474) **Custody of child upon suspension of sentence.** The court may also suspend any sentence imposed under this act, and may permit any dependent child to remain in the custody of any such person found guilty, upon conditions to be prescribed or imposed by the court as may seem most calculated to remove the cause of such dependence or neglect, and while such conditions are accepted and complied with by any such person, such sentence may remain suspended, and such persons shall be considered on probation in said court. In case a bond is given as provided herein, the conditions prescribed by the court may be made a part of the terms and conditions of such bond.

History: En. Sec. 10, Ch. 92, L. 1907; Sec. 7838, Rev. C. 1907; re-en. Sec. 10474, R. C. M. 1921.

10-514. (10475) **Forfeiture of bonds and termination of suspended sentence on breach of conditions.** Upon the failure of any such person to comply with the terms and conditions of such bond, or of the conditions imposed by the court, such bond or the term of probation may be declared forfeited and terminated by the court, and the original sentence executed as though it had never been suspended, and the term of any jail sentence imposed in any such case shall commence from the date of incarceration of any such person after the forfeiture of such bond or term of probation. There shall be deducted from any such period of incarceration any part of such sentence which may have already been served.

History: En. Sec. 11, Ch. 92, L. 1907; Sec. 7839, Rev. C. 1907; re-en. Sec. 10475, R. C. M. 1921.

Collateral References

Criminal Law⇐1001, 1216 (1).
24 C.J.S. Criminal Law §§ 1615, 1618.

10-515. (10476) **Actions on bonds.** It shall not be necessary to bring a separate suit to recover the penalty of any such bond so forfeited; but the court may cause a citation to issue to the surety or sureties thereon, requiring that he or they appear at a time named therein by the court, which time shall be not less than ten nor more than twenty days from the issuance thereof, and show cause, if any there be, why judgment should not be entered for the penalty of such bond, and execution issue for the amount thereof against the property of the surety or sureties thereon, as in civil cases; and, upon failure to appear or failure to show any such sufficient cause, the court shall enter such judgment in behalf of the state

of Montana against such surety or sureties. Any moneys collected or paid upon any such execution, or in any case upon said bond, shall be turned over to the county treasurer of the county in which such bond is given, to be applied to the care and maintenance of the child or children for whose dependency such conviction was had, in such manner and upon such terms as the district court may direct; provided, that if it shall not be necessary, in the opinion of the court, to use such fund, or any part thereof, for the support and maintenance of such child, the same shall be paid into the county treasury and become a part of the funds of such county.

History: En. Sec. 12, Ch. 92, L. 1907; Sec. 7840, Rev. C. 1907; re-en. Sec. 10476, R. C. M. 1921.

10-516. (10477) **Act to be construed liberally.** This act shall be liberally construed, to the end that its purposes may be carried out, to wit: That proper guardianship may be provided for in order that the child may be educated and cared for, as far as practicable, in such manner as best subserves his moral and physical welfare, and, as far as practicable, in any proper case, that the parent, parents, or guardian of such child may be compelled to perform their moral or legal duties in the interest of the child, and in case of failure to perform said duties, that they may be properly punished therefor.

History: En. Sec. 13, Ch. 92, L. 1907; Sec. 7841, Rev. C. 1907; re-en. Sec. 10477, R. C. M. 1921.

Reclaiming Child

Father had not lost right to reclaim child from foster home operated by the state where placement had been under a parental agreement that placing would be temporary only for a prescribed period, and then permanent, and father had failed to stipulate what he would do with child after that time, since father's financial condition had improved after time of placing the child in the home and he evinced a desire to care for the child. In re Vikse, 147 M 417, 413 P 2d 876.

10-517. (10478) **Saving clause.** Nothing in this act shall be construed to repeal any portion of sections 94-301 to 94-305, or any amendments thereof; nor shall anything in this act be construed to repeal any law provided for the support by parents of their minor child, and nothing in said laws shall prevent proceedings under this act, in any proper case.

History: En. Sec. 14, Ch. 92, L. 1907; Sec. 7842, Rev. C. 1907; re-en. Sec. 10478, R. C. M. 1921.

Collateral References

Parent and Child⇐3 (1), 17 (1).

10-518. (10479) **Jurisdiction of justices' courts.** Whenever the district court in and for any county of this state is not in session, a sworn complaint may be filed before any justice of the peace, or police magistrate, in said county, against any person for a violation of any of the provisions of this act, and in case any person is arrested and brought before such justice of the peace, or police magistrate, he shall have jurisdiction as an examining and committing magistrate only, and the proceedings before such justice of the peace, or police magistrate, shall be such as are prescribed in sections 94-6101 to 94-6125, as far as consistent with the purposes of this act; but no child held by said justice or magistrate pending a hearing, or committed by him after hearing to await the action of the district court, shall be confined in a common jail or locked up, but

such child shall be cared for and held in the same manner as is provided for the care and custody of such child or children in cases pending before a district court, and the justice or magistrate shall be empowered to make the proper orders in such cases provided.

History: En. Sec. 15, Ch. 92, L. 1907; Sec. 7843, Rev. C. 1907; re-en. Sec. 10479, R. C. M. 1921.

Compiler's Note

Sections 94-6101 to 94-6125, referred to in this section, were repealed by Sec. 2, Ch. 196, Laws 1967.

Collateral References

Infants⇨18.

43 C.J.S. Infants §§ 6, 7, 99.

10-519. (10479.1) **Transportation to homes without the state—authorization—expense.** The bureau of child protection is authorized to transport to proper homes without the state when such homes are offered minor orphans, half orphans, abandoned children or children of a father who is incapacitated for gainful work by permanent physical disability, who does not have an income sufficient to care for his children, or who is a patient in a sanitarium, or other institution by reason of a tubercular condition; provided, that the county from which the children are removed shall pay one-half (½) of the total expense necessarily incurred by the state in effecting such transportation.

History: En. Sec. 1, Ch. 86, L. 1933.

10-520. Foster or boarding home operator defined. Any person owning or operating a home or institution into which home or institution he takes any child or children for the purpose of caring for them and maintaining them and for which care and maintenance he receives money or other consideration of value and which child is neither his son, daughter, ward, nor related to him by blood, shall be deemed to be an "operator" of a "foster home or boarding home" within the meaning of this act, except that this act shall not apply when any person accepts such care and custody of such child on a temporary basis and simply as a temporary accommodation for the parent or parents, guardian or relative of such child. The word "person" where used in this act, shall include any individual, partnership, voluntary association or corporation.

History: En. Sec. 1, Ch. 178, L. 1947.

10-521. License required. No person shall maintain or operate a foster or boarding home for any child or children within the meaning of this act without first securing a license in writing from the division of child welfare services of the state department of public welfare. No fee shall be charged for such license.

History: En. Sec. 2, Ch. 178, L. 1947.

10-522. Issuance of license—authority of issuing agency. The division of child welfare services of the state department of public welfare is hereby authorized to issue licenses to persons conducting boarding or foster homes and to prescribe the conditions upon which such licenses shall be issued, and making such rules and regulations as it may deem advisable for the operation and regulation of foster and boarding homes for minor children consistent with the welfare of such children. Such licensing

agency shall have the power and authority to inspect all such licensed foster and boarding homes through its duly authorized representatives and to cancel licenses theretofore issued for the failure to observe such rules and regulations. The person operating such homes shall give to such representative such information as may be required and afford them every reasonable facility for observing the operation of such homes.

History: En. Sec. 3, Ch. 178, L. 1947.

10-523. Penalty. Any person who maintains or conducts a foster or boarding home, or assists in conducting or maintaining such home without having first obtained a license in writing as hereto provided, shall be guilty of a misdemeanor and upon conviction be punished by a fine not to exceed one hundred dollars ($100.00).

History: En. Sec. 4, Ch. 178, L. 1947.

10-524. Payment for board and room of dependent and neglected children—reimbursement by county. Whenever agreements are entered into by the department of public welfare for placing dependent and neglected children in approved family foster homes or licensed private institutions, it shall be the duty of the state department to pay by its check or draft, each month, from any funds appropriated for that purpose, the entire amount agreed upon for board and room of such children.

On or before the twentieth of each month the state department shall present a claim to the county of residence of such children for one-half the payments so made during the month. The county must make reimbursement to the state department with twenty days after such claim is presented.

History: En. Sec. 1, Ch. 48, L. 1949; amd. Sec. 1, Ch. 194, L. 1965.

Collateral References
Infants⇐16.11.
43 C.J.S. Infants § 100.

10-525. Recovery from parents—division between state and county. In the event any recovery is made from the parent or parents of children for whom board and room has been paid by the state and county any amount so recovered shall be divided equally between the state department and the county of residence of such child or children.

History: En. Sec. 2, Ch. 48, L. 1949.

CHAPTER 6

JUVENILE COURTS AND PROCEEDINGS AGAINST JUVENILE DELINQUENTS

Section 10-601. Construction and purpose of the act.
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10-601. Construction and purpose of the act. This act shall be liberally construed, to the end that its purpose may be carried out, to wit: that the care, custody, education, and discipline of the child shall approximate, as nearly as may be, that which should be given the child by its parents, and that, as far as practicable, any delinquent child shall be treated, not as a criminal, but as misdirected and misguided, and needing aid, encouragement, help and assistance.

And that, as far as practicable, in proper cases, that the parents or guardians of such child may be compelled to perform their moral and legal duty in the interest of the child.

The principle is hereby recognized that children under the jurisdiction of the court are wards of the state, subject to the discipline and entitled to the protection of the state, which may intervene to safeguard them from neglect or injury and to enforce the legal obligation due to them and from them.

History: En. Sec. 1, Ch. 227, L. 1943.

Cross-Reference

Application of Montana Rules of Civil Procedure to this chapter, see M. R. Civ. P., Rule 81(a), Table A.

Disqualification of Judge

Section 93-901 which governs the removal of judges in civil actions and matters applies to juvenile delinquency proceedings as it is the legislative intent that delinquency proceedings are to be treated as civil proceedings. State ex rel. Ostoj v. McClernan, 129 M 160, 284 P 2d 252, 254.

Repeal of Conflicting Laws

By the enactment of chapter 227, Laws of 1943, and its amendments covering juveniles and creating juvenile courts, the legislature intended to repeal all prior laws in conflict therewith, and amended the general criminal code in so far as it conflicts with the statutes relating to juveniles. State ex rel. Dahl v. District Court, 134 M 395, 333 P 2d 495, 499.

References

Application of Banschbach, 133 M 312, 323 P 2d 112, 113; State v. Manning, 149 M 517, 429 P 2d 625.

Collateral References

Infants⇐16, 18.
43 C.J.S. Infants §§ 6-8, 93, 98-100.

Constitutionality of statute as affected by discrimination in punishments for same offense based upon age, color or sex. 3 ALR 1614 and 8 ALR 854.

Jurisdiction of another court over child as affected by assumption of jurisdiction

by juvenile court. 11 ALR 147 and 78 ALR 317; also 146 ALR 1153.

Criminal responsibility of parent or child for act of child done under fear of or compulsion by parent. 16 ALR 1470.

What constitutes delinquency or incorrigibility, justifying commitment of infant. 45 ALR 1533 and 85 ALR 1099.

Constitutionality of statute which for reformatory purposes deprives parent of custody or control of child. 60 ALR 1342.

Power of juvenile court to exercise continuing jurisdiction over infant delinquent or offender. 76 ALR 657.

Marriage as affecting jurisdiction of juvenile court over delinquent or dependent infant. 14 ALR 2d 336.

Applicability of rules of evidence to juvenile delinquency proceeding. 43 ALR 2d 1128.

Homicide by juvenile as within jurisdiction of juvenile court 48 ALR 2d 663.

Right to and appointment of counsel in juvenile court proceedings. 60 ALR 2d 691.

Age of child at time of alleged offense or delinquency, or at time legal proceedings are commenced, as criterion of jurisdiction of juvenile court. 89 ALR 2d 506.

Necessity of service of process upon infant itself in juvenile delinquency and dependency proceedings. 90 ALR 2d 293.

Right to jury trial in juvenile court proceedings. 100 ALR 2d 1241.

10-602. Definitions. (1) Whenever the words "the court" are used in this act, they mean the juvenile department of the district court as established by this act. Whenever the district court is meant, it is referred to as the district court.

The word "child" means a person less than eighteen years of age.

The word "adult" means a person eighteen years of age or older.

The singular shall be construed to include the plural, and the plural the singular, and the masculine the feminine, when consistent with the intent of this act.

(2) The words "delinquent child" include:

(a) A child who has violated any ordinance of any city.

(b) A child who has violated any law of the state, provided, however, a child over the age of sixteen (16) years who commits or attempts to commit murder, manslaughter, rape when committed under the circumstances specified in subdivision 3 and 4 of section 94-4101, R. C. M. 1947, arson in the first and second degree, assault in the second degree, assault in the first degree, robbery, first or second degree burglary while having in his possession a deadly weapon, and carrying a deadly weapon or weapons with intent to assault, shall not be proceeded against as a juvenile delinquent but shall be prosecuted in the criminal courts in accordance with the provisions of the criminal laws of this state governing the offenses above listed.

(c) A child who by reason of being wayward or habitually disobedient is uncontrolled by his parent, guardian, or custodian.

(d) A child who is habitually truant from school or home.

(e) A child who habitually so deports himself as to injure or endanger the morals or the health of himself or others.

(f) A child who unlawfully, negligently, dangerously, or willfully operates a motor vehicle on the highways of the state or on the roads and streets of any county or city so as to endanger life or property, and a child who operates a motor vehicle on such highways, roads or streets while intoxicated or under the influence of intoxicating liquor.

History: En. Sec. 2, Ch. 227, L. 1943; amd. Sec. 1, Ch. 276, L. 1947; amd. Sec. 1, Ch. 24, L. 1963.

Citation to Parents

Although youths admitted violations contained in the petition while on the stand,

court was without jurisdiction to order commitment where second hearing proceeded upon citation to parents which was not in compliance with section 10-606. State v. Johnson, 141 M 1, 374 P 2d 504, 506.

Criminal Court Jurisdiction

The words "and carrying a deadly weapon or weapons with intent to assault" do not modify robbery or any of the other specifically listed crimes; therefore, as to the crime of robbery, possession of a weapon need not be charged. State ex rel. Keast v. District Court, 136 M 367, 348 P 2d 135. (Dissenting opinion, 136 M 367, 348 P 2d 135, 139.)

References

State ex rel. Bresnahan v. District Court of Cascade County, 127 M 310, 263 P 2d 968, 969; State ex rel. Ostoj v. McClernan, 129 M 160, 284 P 2d 252, 253; State ex rel. Dahl v. District Court, 134 M 395, 333 P 2d 495, 497.

10-603. Jurisdiction. The district courts of the several counties of this state shall have jurisdiction in all cases coming within the terms and provisions of this act. It is provided that the district court shall be called the juvenile court when acting under the juvenile court laws.

The juvenile court shall have exclusive original jurisdiction in proceedings:

(a) concerning any child who is delinquent;

(b) concerning any person under twenty-one (21) years of age charged with having violated any law of the state, other than those laws relating to the commission of or attempt to commit the criminal offenses mentioned in subdivision (2) (b) of section 10-602, or any person charged with having violated any ordinance of any city or town, prior to having become eighteen (18) years of age;

(c) concerning parents who willfully and knowingly fail to provide their children with proper food, clothing, medical attention, and opportunity to attend school.

When jurisdiction shall have been obtained by the court in the case of any child, such child shall continue under the jurisdiction of the court until he becomes twenty-one (21) years of age unless discharged prior thereto, or is confined in a state custodial or correctional institution. In trials under this act the child or parent or guardian or other person having the care, custody or control of such child complained against, or any person interested in such child, shall have the right to demand a trial by jury, which shall be granted as in other cases, unless waived, or the judge of his own motion may call a jury to try such case, except that the jurisdiction of the court shall end if the child is committed to a state institution or agency.

The district court as distinguished from the juvenile court shall have jurisdiction, as in all other criminal cases, of those offenses listed in subdivision (2) (b) of section 10-602, where children over the age of sixteen (16) are accused.

History: En. Sec. 3, Ch. 227, L. 1943; amd. Sec. 1, Ch. 123, L. 1945; amd. Sec. 2, Ch. 276, L. 1947; amd. Sec. 1, Ch. 124, L. 1957.

Construction

A rule of grammatical construction such as "the use of the disjuntive conjunction 'or' separates and denotes an alternative, and that which appears in the clause following cannot modify that which precedes the disjunctive conjunction 'or' " is merely an aid in interpretation, and if the text of the statute indicates a legislative intention contrary to that which would follow from the application of the rules of grammar, then the rule of grammatical construction must give way. State ex rel. Bresnahan v. District Court of Cascade County 127 M 310, 263 P 2d 968, 969.

It is the child as defined in section 10-602 to which this act is primarily applica-

ble and the one with whom the juvenile courts and authorities are ordinarily concerned. When such person arrives at the age of eighteen he is an adult and under the criminal laws of this state is subject to the same rules of society as is any other adult no matter what his age may be. Exception found in the act are those regarding the person between eighteen and twenty-one and such exceptions have to do with detention of such person and trial of such person if the offense for which he or she is charged occurred prior to the time he or she reached the age of eighteen. State ex rel. Bresnahan v. District Court of Cascade County, 127 M 310, 263 P 2d 968, 969. (See, however, dissenting opinion in State ex rel. Bresnahan v. District Court of Cascade County, 127 M 310, 263 P 2d 968, 970.)

Subdivision (b) refers to persons under twenty-one charged with a crime committed by said person prior to the time he or she became eighteen, thus a boy eighteen years old who committed attempted rape is under the jurisdiction of the district court and not under the exclusive jurisdiction of the juvenile court. State ex rel. Bresnahan v. District Court of Cascade County, 127 M 310, 263 P 2d 968, 969, (See, however, dissenting opinion in State ex rel. Bresnahan v. District Court of Cascade County, 127 M 310, 263 P 2d 968, 970.)

Disqualification of Judge

Section 93-901 which governs the removal of judges in civil actions and matters applies to juvenile delinquency proceedings as the legislative intent as found in the juvenile statutes indicates that delinquency proceedings are to be treated as civil proceedings. State ex rel. Ostoj v. McClernan, 129 M 160, 284 P 2d 252, 254.

Right to Trial by Jury

Where a minor, charged with being a delinquent, made a demand for a jury trial on the day preceding the trial and at the opening of the trial, the court was without jurisdiction to try him without a jury. Application of Banschbach, 133 M 312, 323 P 2d 1112, 1113.

A child under the age of sixteen years may never be tried for a law violation in the district court. He is solely under the exclusive jurisdiction of the juvenile court. State ex rel. Dahl v. District Court, 134 M 395, 333 P 2d 495, 498, 499.

References

In re Gonzalez, 139 M 592, 366 P 2d 718, 720.

Collateral References

Infants⇐16.4.
43 C.J.S. Infants § 97.

10-604. Jury. That in the trial of all juvenile cases in the state of Montana where a jury is required in such trial, the trial judge may, in his discretion, draw the jury to try said cause from the names contained in jury box No. 3 provided by section 93-1506, provided, however, in the discretion of the court such cause may be tried before the regular trial jury panel if such jury should be in attendance for the trial of cases.

History: En. Sec. 1, Ch. 41, L. 1945.

References

Application of Banschbach, 133 M 312, 323 P 2d 1112, 1115; In re Gonzalez, 139 M 592, 366 P 2d 718, 720.

10-605. Information — investigation — petition. Whenever any person informs the court that a child is within the provisions of this act, the court shall make a preliminary inquiry to determine whether the interests of the public or of the child require that further action be taken. Thereupon the court may make such informal adjustment as is practicable without a petition, or may authorize a petition to be filed by any person. The proceeding shall be entitled "In the matter of ....., a child under eighteen years of age."

The petition shall be verified, alleging briefly the facts which bring said child within the provisions of the act, and stating (1) the name, age, and residence of the child; (2) the names and residences of his parents; (3) the name and residence of his legal guardian, if there be one; (4) the name and residence of the person having custody or control of the child; (5) and the name and residence of the nearest known relative, if no parent

or guardian can be found. If any of the facts herein required are not known by the petitioner, the petition shall so state.

History: En. Sec. 4, Ch. 227, L. 1943.

Informal Hearing

This section and section 10-611 must be read together and the informal manner in which a hearing may be conducted as provided in section 10-611 refers to the preliminary inquiry provided for in this section. In re Gonzalez, 139 M 592, 366 P 2d 718, 720.

Substance of Petition

The substance of the petition under this section must be the facts which bring the child within the provisions of section 10-602. State v. Johnson, 141 M 1, 374 P 2d 504, 506.

10-606. Citation—notice—custody of the child. After a petition shall have been filed and after such further investigation as the court may direct, unless the parties hereinafter named shall voluntarily appear, the court shall issue a citation reciting briefly the substance of the petition, and requiring the person or persons who have the custody or control of the child to appear personally and bring the child before the court at a time and place stated. If the person so cited shall be other than the parent or the guardian of the child, then the parent or guardian, or both, if in the county, shall also be notified of the pendency of the case and of the time and place appointed, by personal service before the hearing except as hereinafter provided. Citation may be issued requiring the appearance of any other person whose presence, in the opinion of the judge, is necessary.

History: En. Sec. 5, Ch. 227, L. 1943.

Defective Citation

A citation was fatally defective where it failed to recite substance of petition. State v. Johnson, 141 M 1, 374 P 2d 504, 506.

Jurisdiction

The issuance of a citation in a delinquent child proceeding is not jurisdictional if the parties voluntarily appear. In re Gonzalez, 139 M 592, 366 P 2d 718, 720.

References

In re Allamaras, 139 M 130, 361 P 2d 340.

10-607. Service of citation. Service of citation shall be made personally by the delivery of copies thereof to the person cited; provided that if the judge is satisfied that it is impracticable to serve personally such citation or the notice provided in the preceding section, he may order service by registered mail to their last known address, or by the publication thereof, or both, as he may direct. It shall be sufficient to confer jurisdiction if service is effected at least twenty-four hours before the time fixed in the citation for the return thereof.

Service of citation, process or notice required by this act may be made by any suitable person under the direction of the court.

For all necessary travel incident to his official duties in connection with the investigation, supervision, and transportation of children, the probation officer shall, in addition to his official salary, be reimbursed for actual expenses incurred.

History: En. Sec. 6, Ch. 227, L. 1943.

Personal Service

Service of the citation on an adult brother of the child's father at the father's home was not sufficient service on the father. In re Allamaras, 139 M 130, 361 P 2d 340, explained in 139 M 592, 596, 366 P 2d 718.

References
In re Gonzalez, 139 M 592, 366 P 2d 718, 720; State v. Johnson, 141 M 1, 374 P 2d 504, 505.

10-608. Failure to obey citation—warrant. If any person cited as herein provided shall, without reasonable cause, fail to appear, he may be proceeded against for contempt of court. In case the citation cannot be served, or the parties served fail to obey the same, or in any case where it shall be made to appear to the judge that the service will be ineffectual or the welfare of the child requires that he shall be brought forthwith into the custody of the court, a warrant may be issued against the parent or guardian or against the child himself.

History: En. Sec. 7, Ch. 227, L. 1943.

10-609. Release of children taken into custody. Whenever any officer takes a child into custody, he shall, unless it is impracticable, or has been otherwise ordered by the court, accept the written promise of the parent, guardian, or custodian to bring the child to the court at the time fixed. Thereupon such child may be released in the custody of a parent, guardian, or custodian. If not so released, such child shall be placed in the custody of a probation officer or other person designated by the court, or taken immediately to the court, or place of detention designated by the court, and the officer taking him shall immediately notify the court and shall file a petition when directed to do so by the court. The court may make a general order designating such place of detention.

In the case of any child whose custody has been assumed by the court and pending the final disposition of the case, the child may be released in the custody of a parent, guardian or custodian, or of a probation officer or other person appointed by the court, to be brought before the court at the time designated. When not released as herein provided, such child, pending the hearing of the case, shall be detained in such place of detention as shall be designated by the court, subject to further order.

Nothing in this act shall be construed as forbidding any peace officer, police officer, or probation officer from immediately taking into custody any child who is found violating any law or ordinance, or who is reasonably believed to be a fugitive from his parents or from justice, or whose surroundings are such as to endanger his health, morals, or welfare, unless immediate action is taken. In every such case the officer taking the child into custody shall immediately report the fact to the court and the case shall then be proceeded with as provided in this act.

Whenever any officer takes into custody a child who committed or attempted to commit any of the offenses set out in subsection (2) (b) of section 10-602, or whom he has reasonable cause to believe has committed or attempted to commit such offense or offenses, he shall proceed in accordance with the provisions of the criminal law of this state.

History: En. Sec. 8, Ch. 227, L. 1943; amd. Sec. 3, Ch. 276, L. 1947.

Collateral References
Infants⇐16.11.
43 C.J.S. Infants § 100.

10-610. Transfer from other courts. If, during the pendency of a criminal or quasi-criminal charge against any person in any other court,

it shall be ascertained that said person was at the time of committing the alleged offense within the definition of "delinquent child" as set out in subsection (2) (b) of section 10-602, it shall be the duty of such court to transfer such case immediately, together with all papers, documents, and testimony connected therewith, to the juvenile court. The court making the transfer shall order the child to be taken forthwith to the place of detention designated by the juvenile court or to that court itself, or release such child in the custody of some suitable person, to appear before the juvenile court at a time designated. The juvenile court shall thereupon proceed to hear and dispose of such case in the same manner as if it had been instituted in that court in the first instance.

History: En. Sec. 9, Ch. 227, L. 1943; amd. Sec. 4, Ch. 276, L. 1947.

Criminal Information

District criminal court has no jurisdiction to authorize or order the filing of a criminal information against a juvenile child of the age of fifteen years and less than sixteen years of age, nor to try such child in the district court. State ex rel. Dahl v. District Court, 134 M 395, 333 P 2d 495, 497.

10-611. Hearing—judgment. The court may conduct the hearing in an informal manner and may adjourn the hearing from time to time. In the hearing of any juvenile case, as distinguished from a case involving a child charged with the commission of or attempt to commit any of the criminal offenses set out in subdivision (2) (b) of section 10-602, the general public shall be excluded and only such persons admitted as have a direct interest in the case; provided, however, that whenever the hearing in the juvenile court is had on a written petition charging the commission of any felony, persons having a legitimate interest in the proceeding, including responsible representatives of public information media, shall not be excluded from such hearing. All cases involving children shall be heard separately and apart from the trial of cases against adults.

If the court shall find that the child is delinquent within the provisions of this act, it may by order duly entered proceed as follows:

(1) Place the child on probation or under supervision upon such terms as the court shall determine.

(2) Commit the child to a suitable public institution or agency, except youth forest camps; or commit the child to the department of institutions or to a suitable private institution or agency incorporated under the laws of the state, approved by the state department of public welfare, and authorized to care for children; or to place them in suitable foster homes, approved by the department of public welfare, or the probation department.

(3) Order such further care and treatment as the court may deem best for the best interests of the child, except as herein otherwise provided.

No commitment of any such delinquent child to any institution under this act shall be deemed commitment to a penal institution. No adjudication upon the status of any delinquent child in the jurisdiction of the court shall operate to impose any of the civil disabilities ordinarily imposed by conviction, nor shall any delinquent child be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction, nor shall any child be charged with or convicted of any crime

in any court except as provided in the preceding section of this act. The disposition of the delinquent child or any evidence given in the court shall not be admissible as evidence against the child in any other case or proceeding.

Whenever the court shall commit a delinquent child to any institution or agency, it shall transmit with the order of commitment a summary of its information concerning such child.

Whenever a child or an adult under the age of twenty-one (21) years is convicted of a felony or felonies or attempt to commit a felony or felonies and is sentenced to imprisonment in the state prison, he shall, throughout the term of imprisonment or until such time as he reaches the age of twenty-one (21) years, be kept separate and apart at all times from those inmates who are over the age of twenty-one (21) years.

History: En. Sec. 10, Ch. 227, L. 1943; amd. Sec. 5, Ch. 276, L. 1947; amd. Sec. 1, Ch. 132, L. 1961; amd. Sec. 2, Ch. 134, L. 1967.

Application of Section

The prohibition in this section, which prohibits the "disposition of a delinquent child or evidence given in the court" from being used as evidence in any other case or proceeding against the child, applies only where the child is a party in a later proceeding; where the child is a witness in a later case, evidence of contradictory statements made in the juvenile court may be used for the purpose of impeachment. State v. Searle, 125 M 467, 239 P 2d 995, 998.

Due Process

Even though a hearing may be informal, the requirements of due process must be met; where there was no sworn testimony, no proof, no representation by counsel, no proper citation to the parent, and no hearing in fact, an order of commitment to the industrial school was reversible. In re Allamaras, 139 M 130, 361 P 2d 340, explained in 139 M 592, 596, 366 P 2d 718, 720.

Informal Hearing

This section and section 10-605 must be read together and the informal manner in which a hearing may be conducted as provided in this section refers to the preliminary inquiry provided for in section 10-605. In re Gonzalez, 139 M 592, 366 P 2d 718, 720.

An informal trial is improper when the hearing is upon a petition of county attorney charging a minor child, sixteen years of age, with being a delinquent child, which could result in commitment. In re Gonzalez, 139 M 592, 366 P 2d 718, 720.

Juvenile Court Records Not Criminal

Trial court was not in error in reading into the record in open court prior events of defendant's life as disclosed by his juvenile court record where the juvenile court record was not challenged by defendant or his counsel. State v. Manning, 149 M 517, 429 P 2d 625.

Stenographic Record of Evidence

Proceeding upon a petition of county attorney charging minor with being a delinquent child, resulting in commitment of child to industrial school, was remanded to district court where no stenographic record had been made of the evidence presented in the juvenile court. In re Gonzalez, 139 M 592, 366 P 2d 718, 720.

10-611.1. Power of district court to commit child to reception and evaluation center. The district courts of this state having jurisdiction over juvenile offenses may commit a child held under its jurisdiction on a charge under which the child could be adjudged a delinquent to a reception and evaluation center for children as established by law. Such commitment shall be in sole discretion of the district judge and shall be for a period not to exceed forty-five (45) days.

History: En. Sec. 1, Ch. 134, L. 1967.

10-612. Form of commitment to state juvenile facility. Whenever under the provisions of this act the court orders a delinquent child com-

mitted the state vocational school for girls, state industrial school or other state department of institutions juvenile facility, the form of commitment shall be as follows:

ORDER OF COMMITMENT

State of Montana, County of ....., ss:

In the district court for the .....judicial district.

On the ..... day of ....., 19...., ..., a minor of this county, ... years of age, was brought before me charged with ..... Upon due proof I find that ..... is a suitable person to be committed to .....

It is ordered that ..... be committed to ..... until .....attains the age of 21 or is sooner legally discharged or placed out.

The names, addresses and occupations of the parents are:

Name	Address	Occupation
.....	.....	.....
.....	.....	.....

The names and addresses of other near relatives are:

.....

.....

Witness my hand this ..... day of ..... A.D. 19.....

.....

Judge

History: En. Sec. 11, Ch. 227, L. 1943; amd. Sec. 83, Ch. 199, L. 1965.

10-613. Modification of judgment. Any order of the court may be modified at any time, except an order committing a child to the custody of a state custodial or correctional institution.

History: En. Sec. 12, Ch. 227, L. 1943; amd. Sec. 2, Ch. 123, L. 1945.

10-614. Selection of custodial agency. In placing a delinquent child under any guardianship or custody other than that of its parents, the court shall, when practicable, select a person or an institution or agency governed by persons of like religious faith as that of such delinquent child, or in case of a difference in the religious faith of the parents, then of the religious faith of the delinquent child, or if the religious faith of the delinquent child is not ascertained, then of either of the parents.

History: En. Sec. 13, Ch. 227, L. 1943; amd. Sec. 6, Ch. 276, L. 1947.

10-615. Support of delinquent child committed to a custodial agency. When a delinquent child is committed by the court to custody other than that of its parents, and no provision is otherwise made by law for the support of such delinquent child, compensation for the care of such delinquent child, when approved by order of the court, shall be a charge upon the county, or the appropriate division thereof. But the court may, after giving the parent a reasonable opportunity to be heard, adjudge and order that such parent shall pay in such manner as the court may direct,

such sum as will cover, in whole or in part, the support of such delinquent child, and if such parent shall willfully fail or refuse to pay such sum, he may be proceeded against as provided by law for cases of desertion or failure to provide subsistence, or said cost may be collected in a civil action against the parent or parents.

History: En. Sec. 14, Ch. 227, L. 1943; amd. Sec. 7, Ch. 276, L. 1947.

10-616. Support of dependents. In any delinquency hearing where it appears that the child's parents are liable for desertion, abandonment, or failure to provide subsistence or care for such child the court may issue a citation or other necessary process to compel the attendance of the child's parents or any other necessary person. If such parent is found guilty of desertion, abandonment, or failure to provide subsistence or care for any person for whose maintenance or care such adult is legally responsible, the court may inquire into and determine his ability to provide for maintenance or care of such person and may direct when, how, and where money for such maintenance or care shall be paid; and in the event that such adult shall willfully and without just excuse, fail or refuse to pay the same in accordance with the court's order, said person shall be dealt with in accordance with the provisions of law relating to desertion or failure to provide subsistence, or such adult may be proceeded against as for contempt of court.

History: En. Sec. 15, Ch. 227, L. 1943.

10-617. Penalty for improper and negligent training of children. Any parent or parents, legal guardian, or any other person who shall encourage, willfully cause or contribute to, or through negligence in the care, custody, guidance, education, maintenance, or direction of any child under eighteen years of age, cause or permit such child to violate any law of this state, or the ordinance or ordinances of any city of this state, or to be or become incorrigible, or to knowingly associate with theives, vicious or immoral persons; or to grow up in idleness or crime, or to knowingly enter a house of prostitution; or to knowingly visit or patronize any place, house, or apartment building where any gambling device is or gambling devices are or shall be operated or run, or where any gambling is done or conducted, or to patronize or visit any saloon or saloons, or dramshop or dramshops, where intoxicating liquors are sold, or to wander about the streets of any town or city in the nighttime, without being on lawful business or occupation, or to habitually wander about or visit any railroads or tracks, or to jump or hook on to any moving train or to enter any car or engines, without lawful authority; to use habitually any vile, obscene, vulgar, profane, or indecent language, or to be guilty of immoral conduct in any public place, or about any schoolhouse or grounds, or keep or permit it in or about any saloon or place where spirituous liquors or intoxicating liquors are sold, or in any gambling house or place where gambling is practiced, or in a house of ill fame or prostitution; or to become addicted to the use of spirituous and intoxicating liquors not for medicinal purposes prescribed by a physician; shall be guilty of a misdemeanor and upon trial and conviction thereof shall be

fined in a sum not less than ten dollars ($10.00) and not to exceed one thousand dollars ($1,000.00), or imprisonment in the county jail for a period not exceeding nine (9) months, or by both such fine and imprisonment.

History: En. Sec. 16, Ch. 227, L. 1943; amd. Sec. 1, Ch. 22, L. 1959.

Selling Liquor to Minor

The fact that officers may have violated this law by giving money to a minor for him to buy liquor from the defendant in order to procure evidence does not absolve the defendant from conviction for selling liquor to a minor. State v. Parr, 129 M 175, 283 P 2d 1086, 1090. (Dissenting opinion, 129 M 175, 283 P 2d 1086, 1090.)

10-618. Suspension of sentence—bond. The court may suspend any sentence for the violation of the provisions of the preceding section or release any person sentenced under this act from custody upon condition that such person shall furnish a good and sufficient bond or undertaking to the state of Montana, in such penal sum, not exceeding three thousand dollars ($3,000.00), as the court shall determine, upon conditions to be prescribed or imposed by the court, as seems most calculated to remove the cause of such delinquency of the child or children, and while such conditions are accepted and complied with by such persons, such sentence may, in the discretion of the court, remain suspended, and such persons shall be considered on probation in said court; and in case a bond is given as provided herein, the conditions prescribed by the court may be made a part of the terms and conditions of such bond.

History: En. Sec. 17, Ch. 227, L. 1943.

10-619. Forfeiture of bond—execution of sentence. Upon failure of any person to comply with ther terms and conditions imposed by the court, such bond or the term of probation may be declared forfeited and terminated by the court, and the original sentence executed as though it had never been suspended, and the term of any jail sentence imposed in any such case shall commence from the date of the incarceration of any such person after the forfeiture of such bond or term of probation. There shall be deducted from any such period of incarceration any part of such sentence which may already have been served.

History: En. Sec. 18, Ch. 227, L. 1943.

10-620. Citation and judgment against surety on bond. It shall not be necessary to bring a separate suit to recover the penalty of any such bond forfeited, but the court may cause a citation to issue to the surety or sureties thereon, requiring that he or she appear at a time named therein by the court, which time shall not be less than ten (10) nor more than twenty (20) days from the issuance thereof, and show cause, if any there be, why judgment should not be entered for the penalty of such bond and execution issue for the amount thereof against the property of the surety or sureties thereon, as in civil cases, and, upon failure to appear or failure to show any sufficient cause, the court shall enter judgment in behalf of the state of Montana, against the surety or sureties. Any moneys collected or paid upon any such execution or in any case upon said bond, shall be turned over to the county treasurer of the county in which such bond

is given, to be applied to the care and maintenance of delinquent children committed under the provisions of this act.

History: En. Sec. 19, Ch. 227, L. 1943; amd. Sec. 8, Ch. 276, L. 1947.

10-621. Designation of judge. In districts where there are more than one judge, one of the judges shall be designated to act as the judge who shall hear all proceedings under this act; provided that in districts where judges are required to travel from one county to another, either one of the judges may act.

History: En. Sec. 20, Ch. 227, L. 1943.

10-622. Probation officers—appointments—removal—salaries. In every judicial district of the state of Montana the judge thereof having jurisdiction of juvenile matters may appoint one discreet person of good moral character, who shall be known as the chief probation officer of such district and who shall hold his office until removed by the court. Such officer shall receive for his services such sum as shall be specified by the court upon appointment, provided that the judge of the district court may employ him on a yearly salary not to exceed nine thousand dollars ($9,000), or on a per diem basis for the time actually and necessarily employed in performing the duties of the office. The salary of such officer shall be apportioned among and paid by each of said counties in which said officer shall be appointed to act, in proportion to the assessed valuation of such counties for the year then current, except that where such official is appointed for one county, his salary shall be paid by that county.

The judge having jurisdiction of juvenile matters may also appoint such additional persons to serve as deputy probation officers as the judge deems necessary; their salaries to be fixed by the judge at the time of appointment, provided that such salaries shall not exceed ninety per cent (90%) of the salary of the chief probation officer.

History: En. Sec. 21, Ch. 227, L. 1943; amd. Sec. 1, Ch. 116, L. 1947; amd. Sec. 1, Ch. 27, L. 1951; amd. Sec. 1, Ch. 112, L. 1953; amd. Sec. 1, Ch. 36, L. 1955; amd. Sec. 1, Ch. 177, L. 1957; amd. Sec. 1, Ch. 166, L. 1961; amd. Sec. 1, Ch. 115, L. 1963; amd. Sec. 1, Ch. 94, L. 1965; amd. Sec. 1, Ch. 7, L. 1967.

10-623. Duties and powers of the probation department. The chief probation officer, under the direction of the judge, shall have charge of the work of the probation department. The probation department shall make such investigation as the juvenile court may direct, keep a written record of such investigations and submit the same to the judge, or deal with the same as the judge may direct. The department shall furnish to any delinquent child or to any person within the purview of sections 10-617 and 10-618, placed on probation a written statement of the conditions of probation, and shall keep informed concerning the conduct and condition of each person under its supervision, and shall report thereon to the judge as he may direct. Each probation officer shall use all suitable methods to aid persons on probation and bring about improvement in their conduct and condition. The probation department shall keep full records of its work, and shall keep accurate and complete accounts of money collected from persons under its supervision, and shall give receipts

therefor and shall make reports thereupon as the judge may direct. Probation officers, for the purpose of this act, shall have the powers of police officers.

All information obtained in discharge of official duty by any officer or other employee of the juvenile court shall be privileged and shall not be disclosed to anyone other than the judge and others entitled under this act to receive such information, unless and until otherwise ordered by the judge.

History: En. Sec. 22, Ch. 227, L. 1943; amd. Sec. 9, Ch. 276, L. 1947.

10-624. Bond of the chief probation officer. In each judicial district or county having a chief probation officer, such officer shall be required to furnish to the state of Montana a bond in the sum of one thousand dollars ($1,000.00) for the faithful performance of his duties.

History; En. Sec. 23, Ch. 227, L. 1943.

10-625. Physical and mental examinations and treatment. The court may cause any person coming under its jurisdiction to be examined by a physician, pyschiatrist, or psychologist, appointed by the court.

Whenever a child, concerning whom a petition has been filed, appears to be in need of medical or surgical care, the court may order the parent, guardian or custodian to provide treatment for such child in a hospital or otherwise. If such parent, guardian, or custodian fails to provide such treatment, the court may, after due notice, enter an order therefor, and expense thereof, when approved by the court, shall be a charge upon the county; but the court may adjudge that the person or persons having the duty under the law to support such child pay part or all of the expenses of such treatment in the manner provided in a preceding section of this act.

History: En. Sec. 24, Ch. 227, L. 1943.

10-626. Place of detention. No child under eighteen (18) years of age shall be placed in or committed to any prison, jail, or lockup, nor be detained nor transported in association with criminal, vicious, or dissolute persons, provided, that a child whose habits or conduct are deemed to be such as to constitute a menace to other persons may, with the consent of the judge or chief probation officer, be placed in a jail or other place of detention for adults, but in a room or ward separate from adults; provided further that, whenever a child over sixteen (16) years of age is charged with the commission of, or attempt to commit any of the offenses set out in subsection (2) (b) of section 10-602, or whenever an adult under the age of twenty-one (21) years is charged with the commission of, or attempt to commit, a felony or felonies, he shall be placed in a jail or other place of detention for adults, but in a room or ward separate from such adults who are over the age of twenty-one (21) years.

Provision shall be made for the temporary detention of children who are not charged with the commission of, or attempt to commit, any of the offenses set out in subsection (2) (b) of section 10-602, in a detention home to be conducted as an agency of the court, or the court may arrange for the boarding of such children temporarily in foster homes, subject to the

supervision of the court, or may arrange with an incorporated institution or agency or the department of public welfare for the temporary care of such children within the jurisdiction of the court.

History: En. Sec. 25, Ch. 227, L. 1943; amd. Sec. 10, Ch. 276, L. 1947.

10-627. Foster homes—youth home. In each county the chief probation officer with the approval of the judge, shall select a number of family homes, to be known as foster homes, where delinquent children may be placed permanently or temporarily while disposition is being made. It shall be the duty of the county commissioners to provide funds for payment of such foster parents at a rate to be determined by the court judge.

In all counties the county commissioners may provide by purchase, lease, or otherwise, a place to be known as the youth home, which shall not be used for the confinement of adult persons charged with criminal offenses, where delinquent children may be detained until final disposition, which place shall be maintained by the county as in other like cases. The judge having jurisdiction may appoint a superintendent and a matron, who shall have charge of said home and of the children detained therein.

Such superintendent and matron shall be a suitable and discreet person, qualified as teacher of children. Such home shall be furnished in a comfortable manner, as nearly as may be as a family home. The compensation of such superintendent and matron shall be fixed by the court, and such compensation and the maintaining of such home shall be paid out of the county treasury.

History: En. Sec. 26, Ch. 227, L. 1943.

10-628. Juvenile court committee. In every county of the state the judge having jurisdiction must appoint a committee, willing to act without compensation, composed of not less than three (3) nor more than seven (7) reputable citizens, which committee shall be designated as a juvenile court committee; this committee shall be subject to the call of the judge to meet and confer with him on all matters pertaining to the juvenile department of the court, and shall act as a supervisory committee of detention homes, and in the selection of foster homes.

History: En. Sec. 27, Ch. 227, L. 1943; amd. Sec. 1, Ch. 128, L. 1957.

10-629. County attorney to prosecute. It shall be the duty of the county attorney to assist the probation officer or other person acting in that capacity in investigating all complaints under this act, and to prosecute all persons charged with violating any of the provisions of this act, when requested by the court.

History: En. Sec. 28, Ch. 227, L. 1943.

References

In re Gonzalez, 139 M 592, 366 P 2d 718, 720.

10-630. Appeals. In the case of a delinquent child an appeal to the supreme court may be taken by the party aggrieved in the manner provided by law or by rule of court for appeal in civil cases. In any case charging an adult with contributing to the delinquency of a child, an ap-

peal may be taken to the supreme court in the manner provided by law or by rule of court for appeal in criminal cases. In any other case against an adult coming under this act an appeal may be taken to the supreme court in the manner provided by law or by rule of court for appeal in civil cases. An appeal, in the case of a delinquent child, shall not suspend the order of the court, nor shall it discharge the delinquent child from the custody of that court or of the person, institution or agency to whose care such delinquent child shall have been committed unless that court shall so order. If the supreme court does not dismiss the proceedings and discharge the delinquent child, it shall affirm or modify the order of the district court and remand the delinquent child to the jurisdiction of the district court for supervision and care, and thereafter the delinquent child shall be and remain under the jurisdiction of the district court in the same manner as if such court had made said order without an appeal having been taken.

History: En. Sec. 29, Ch. 227, L. 1943; amd. Sec. 11, Ch. 276, L. 1947.

Bill of Exceptions

A juvenile who appeals from a commitment by virtue of the provisions of this section has the right to have the evidence presented in the district court settled in a bill of exceptions and brought before the supreme court for a review under section 93-5505. In re Gonzalez, 139 M 592, 366 P 2d 718, 720.

References

State ex rel. Ostoj v. McClernan, 129 M 160, 284 P 2d 252, 254.

Collateral References

Infants⇐16.14.
43 C.J.S. Infants § 99.

10-631. County commissioners authorized to provide funds. The county commissioners of all counties are hereby authorized, empowered, and required to provide the necessary funds and to make all needful appropriations to carry out the provisions of this act.

History: En. Sec. 30, Ch. 227, L. 1943.

10-632. Institutional and welfare laws not repealed. Nothing in this act shall be construed to repeal any portion of the acts relating to the state vocational school for girls or state industrial school, or the act or acts relating to the state department of public welfare or the public welfare act.

History: En. Sec. 33, Ch. 227, L. 1943; amd. Sec. 84, Ch. 199, L. 1965.

10-633. Publicity forbidden. No publicity shall be given to the identity of an arrested juvenile or to any matter or proceeding in the juvenile court involving children proceeded against as, or found to be, delinquent children, except where a hearing or proceeding is had in the juvenile court on a written petition charging the commission of any felony.

History: En. Sec. 12, Ch. 276, L. 1947; amd. Sec. 2, Ch. 132, L. 1961.

CHAPTER 7

CHILD ADOPTION AGENCIES

Section 10-701. Definitions.
10-702. License required—term of license—no fee charged.

10-703. Licenses issued by department of public welfare—rules and regulations—minimum requirements of licensees.
10-704. Investigation of agencies—cancellation of licenses.
10-705. Certified copy of license furnished for adoption proceedings.
10-706. Operation without license—penalty.

10-701. Definitions. The word "person" where used in this act, shall include any individual or individuals, partnership, voluntary association or corporation.

The word "agency" where used in this act, includes any person not related by blood or marriage to any minor child to be adopted. This act shall not apply to the state orphan's home of the state of Montana.

History: En. Sec. 1, Ch. 179, L. 1949.

Cross-Reference

Adoption proceedings, secs. 61-201 to 61-217.

Collateral References

What constitutes abandonment or desertion of child by its parent or parents within purview of adoption laws. 35 ALR 2d 662.

10-702. License required—term of license—no fee charged. No person shall act as an agency for procuring or selecting proposed adoptive homes or placing minor children in proposed adoptive homes, or soliciting persons to adopt minor children or arranging for persons to adopt minor children who is not the holder of a license secured under the provisions of this act. Licenses shall be valid for the balance of the calendar year in which issued. No fee shall be charged for such license.

History: En. Sec. 2, Ch. 179, L. 1949.

Collateral References

Licenses⊂⇒11 (1).
53 C.J.S. Licenses § 30.

10-703. Licenses issued by department of public welfare — rules and regulations—minimum requirements of licensees. The state department of public welfare is hereby authorized and directed to issue licenses to persons now acting as agencies for procuring the adoption of minor children, or who may desire to operate as such agency in the future, and to prescribe the conditions upon which such licenses shall be issued, and to make such rules and regulations for the conduct of the affairs of such agencies as are consistent with the welfare of such minor children, provided, however, that said state department of public welfare must issue licenses to agencies meeting the following minimum requirements:

(1) The chief function of the agency must be the care and placement of minor children.

(2) The agency must operate on a nonprofit basis and be financially responsible in and for its operation.

(3) The directing or managing personnel of the agency must be qualified both on the basis of professional education and personality.

(4) Complete records must be kept of both the minor children and adopting parents with which the agency deals, and such records must be confidential.

(5) The agency must follow the practice of verifying that the child is legally available for adoption and of not completing the adoption until the child has been in the proposed adoptive home for a trial period.

(6) The agency must have and use facilities for making a social study of the child and proposed adoptive parents before placement of the child, particularly with regard to (a) the physical and mental health, emotional stability, and personal integrity of the adopting parents, and their ability to promote the child's welfare; and (b) the physical and mental condition of the child, and its family background.

(7) The agency must agree to co-operate with courts having jurisdiction in adoptive matters, and with other public agencies having to deal with the welfare of minor children.

(8) Any such agency must annually submit a full, complete and true financial statement to the department of public welfare, and such statement shall contain a full accounting of the operations of such agency during the preceding year. When the state department of public welfare finds, upon the basis of said report, or upon its own investigation, that any such agency has not conducted, or is financially incapable of conducting, its operations according to the standards established pursuant to this act, then the department is precluded from the issuance of, or continuance in effect of, any such license for said agency for the subsequent year.

History: En. Sec. 3, Ch. 179, L. 1949; amd. Sec. 1, Ch. 156, L. 1957.

Collateral References

Necessity of consent of parent under statute providing for adoption of abandoned or deserted child. 35 ALR 2d 662.

10-704. Investigation of agencies—cancellation of licenses. The state department of public welfare shall have the power and authority, through its duly authorized representative, to investigate the operations of any such licensed agencies and to cancel licenses theretofore issued for failure to observe prescribed rules and regulations, or to maintain minimum requirements as in the preceding section of this act set out. Such agencies shall give to such representatives all information requested and afford them every reasonable facility for observing the operation of such agencies.

History: En. Sec. 4, Ch. 179, L. 1949.

10-705. Certified copy of license furnished for adoption proceedings. Upon the request of any district court, proposed adoptive parents, or agency, a certified copy of any license issued and in good standing shall be furnished by the state department of public welfare for use in any adoption proceeding with which any licensed agency is concerned.

History: En. Sec. 5, Ch. 179, L. 1949.

10-706. Operation without license—penalty. Any person who maintains or conducts an agency for procuring the adoption of minor children, or assist in [the] maintaining or conducting of such agency, without first having obtained a license herein provided, shall be guilty of a felony and upon conviction may be punished by a fine not exceeding one thousand dollars ($1,000.00).

History: En. Sec. 6, Ch. 179, L. 1949.

Compiler's Note

The bracketed word "the" was inserted by the compiler.

CHAPTER 8

DAY CARE FACILITIES FOR CHILDREN

Section 10-801. Definitions.
10-802. License required—term of license—no fee charged.
10-803. Standards for child care.
10-804. Fire safety—certification required by state fire marshal.
10-805. Health protection—certificate required by state board of health.
10-806. Licenses issued by the board of public welfare—rules and regulations—minimum requirements of licensees.
10-807. Provisional license.
10-808. License—renewal.
10-809. Supervision—inspection—consultation—records—reports.
10-810. License—denial—nonrenewal—revocation—hearing.
10-811. Violations.

10-801. Definitions. The word "child" wherever used in this act shall mean any person under twelve years of age. "Day Care Facility" shall mean any person, group of persons, association or place, incorporated or unincorporated, that receives for care during the day or a part of the day three or more children of separate families and continues this type of care for five or more consecutive weeks. It excludes the person who limits care to children who are related to him by blood or marriage or under his legal guardianship and all group facilities established chiefly for educational purposes. "Family Day Care Home" shall mean a family home that receives from three to six children of separate families for care during the day or part of the day for five or more consecutive weeks. "Day Care Center" shall mean any day care facility that receives seven or more children for care for five or more hours of the day for five or more consecutive weeks. It may include facilities known as child care centers, nursery schools, day nurseries, and centers for the mentally retarded.

History: En. Sec. 1, Ch. 247, L. 1965.

10-802. License required—term of license—no fee charged. No person, group of persons, or corporation shall establish and maintain a day care facility for children unless licensed to do so by the state board of public welfare. The license shall be valid for one year. There shall be no fee for the license.

History: En. Sec. 2, Ch. 247, L. 1965.

10-803. Standards for child care. The state board of public welfare shall prescribe and publish minimum standards for a license. In developing these standards the department shall seek the advice and assistance of the state board of health and superintendent of public instruction, representatives of day care facilities, specialists in child care, and representatives of parent groups who use the services of day care facilities. The standards may pertain to:

(a) character, suitability, and qualifications of applicant, and other persons directly responsible for the care of children

(b) the number of individuals or staff required for adequate supervision and care of children in day care centers

(c) child care programs and practices essential to the protection of health, safety, development, and well-being of children

(d) adequate and appropriate admission policies

(e) adequacy of physical facilities and equipment

(f) general financial ability and competence of applicant to provide necessary care for children and maintain prescribed standards.

History: En. Sec. 3, Ch. 247, L. 1965.

81 C.J.S. Social Security and Public Welfare §§ 9, 10.

Collateral References

Social Security and Public Welfare⚖5, 6.

10-804. Fire safety—certification required by state fire marshal. The state fire marshal shall adopt, promulgate, and enforce rules and regulations for the protection of children in care facilities from fire hazards, and arrange for such inspections and investigations as he deems necessary. Each applicant for a license to operate a day care center shall submit to the department of public welfare a certificate of approval indicating that fire safety rules and regulations have been met before a license can be issued, provided that in all non-fire-resistant homes two stories or more in height with ten or more children, automatic sprinkler systems acceptable to the state fire marshal shall be installed, with said state fire marshal to issue for the information and use of the board, certificates of compliance with fire regulations and standards applicable to the facilities.

History: En. Sec. 4, Ch. 247, L. 1965.

10-805. Health protection — certificate required by state board of health. The state board of health shall adopt rules and regulations for the protection of children in day care centers from the health hazards of overcrowding, food preparation and communicable diseases and arrange for such inspections and investigations as it deems necessary. Each applicant for a license to operate a day care center shall submit to the board of public welfare a certificate of approval that state board of health rules and regulations have been met before a license can be issued.

History: En. Sec. 5, Ch. 247, L. 1965.

10-806. Licenses issued by the board of public welfare—rules and regulations—minimum requirements of licensees. The state board of public welfare is hereby authorized and directed to issue licenses to persons to receive into a day care facility, children for care during the day or part of a day. This includes agencies now caring for such children who may desire to operate as a day care facility in the future. Application for a license shall be made to the state board of public welfare through the county department of public welfare in the county in which the applicant lives, on forms prescribed by the state board. Upon receipt of the application, the state board of county welfare department, shall, within a reasonable time, make an investigation to determine whether or not a license should be granted.

The state board of public welfare shall prescribe the conditions upon which such licenses are issued, and will make such rules and regulations for the conduct of the affairs of such facilities as are consistent with the welfare of the children received, provided; however, that the said state

board of public welfare must issue licenses to agencies meeting the following minimum requirements;

(a) the applicant, his employees, and all those persons who will come in direct contact with the children shall be of good moral character

(b) the staff of the facility shall be sufficient in number to provide adequate supervision and care of the children admitted

(c) essential programs and practices carried on by the facility staff shall be developed and carried out with due regard for the protection of the health, safety, development, and well-being of the children

(d) applicant and staff shall be qualified by practical experience or education or training, to give good care and treatment to the children

(e) physical facilities shall be of a kind that can meet the minimum state standards to provide for the protection of the children from fire and health hazards

(f) intake records shall be kept on each child admitted for care. Public liability insurance and fire insurance shall currently be in force for the protection of the operator, his staff and the facility

(g) the applicant and staff will limit admissions to the maximum number indicated on the current license

(h) the applicant will arrange for the necessary precautions to guard against communicable diseases.

History: En. Sec. 6, Ch. 247, L. 1965.

10-807. Provisional license. The state board of public welfare may, in its discretion, issue a provisional license for a period of not more than six months if it finds that a substandard day care facility is attempting to meet the minimum standards. The requirement that a day care center shall be certified by the state fire marshal and the state board of health may not be waived.

History: En. Sec. 7, Ch. 247, L. 1965.

10-808. License—renewal. If a licensed day care facility desires to apply for a renewal of its license, a request for renewal shall be made in writing to the state board of public welfare ten days prior to the expiration of its license.

History: En. Sec. 8, Ch. 247, L. 1965.

10-809. Supervision—inspection—consultation—records — reports. It shall be the duty of the board of public welfare or their authorized representative to make periodic visits to all licensed day care facilities to ensure that minimum standards are maintained and to give consultation upon request to every licensee who desires to upgrade the services of his facility. It shall be the duty of the board or their authorized representative to assist applicants in meeting the minimum requirements. It shall be the duty of every applicant and every licensee to give right of entrance and inspection of premises to representatives of the board, at reasonable times, to keep and maintain such records as the board may prescribe, to permit inspection of these records, and to report to the board such facts as may be required on blanks furnished by the board.

History: En. Sec. 9, Ch. 247, L. 1965.

10-810. License — denial — nonrenewal — revocation — hearing. The board, after notice and opportunity for hearing to the applicant of [or] licensee, is authorized to deny, suspend or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this law. Such notice shall be effected by registered mail, or by personal service setting forth the particular reasons for the proposed action and fixing a date not less than thirty (30) days from the date of such mailing or service, at which the applicant or licensee shall be given an opportunity for a prompt and fair hearing. On the basis of any such hearing, or upon default of the applicant or licensee the board shall make a determination specifying its findings of fact and conclusions of law. A copy of such determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision revoking, suspending or denying the license or application shall become final thirty (30) days after it is so mailed or served, unless the applicant or licensee within such thirty (30) days' period, commences an action in the district court, pursuant to this section. The procedure governing hearings authorized by this section shall be in accordance with rules promulgated by the board with the advice of the advisory council. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless the decision is reviewed pursuant to this section. A copy or copies of the transcript may be obtained by any interested party on payment of the cost of preparing such copy or copies. Witnesses may be subpoenaed by either party.

Any applicant or licensee of the state aggrieved by the decision of the board after a hearing, may, within thirty (30) days after mailing or serving of notice of the decision as provided in this section, commence an action in the district court of the county in which the long term care facility is located or to be located, by the filing of a verified complaint against the board as defendant, and summons shall issue and all further proceedings be conducted as in the case of ordinary civil actions. The board shall, upon filing its answer, certify and file therewith in the court wherein the action is pending a certified copy of the record and decision, including the complete transcript of the hearings on which the decision is based. Findings of fact by the board shall be conclusive unless substantially contrary to the weight of the evidence, or unless in conflict with law, but upon good cause shown the court may remand the case to the board to take further evidence, and the board may thereupon affirm, reverse or modify its decision. The court may affirm, modify or reverse the decision of the board and either the applicant or licensee or the board or state may apply for such further review by appeal or otherwise, as is provided by law. Pending final disposition of the matter the status quo of the applicant or licensee shall be preserved, except as the court otherwise orders in the public interest.

History: En. Sec. 10, Ch. 247, L. 1965.

10-811. Violations. Whenever the board of public welfare is advised or has reason to believe that any person, group of persons, or corporation is operating a child care facility without a license, it shall make an in-

vestigation to ascertain the facts. If it finds that such child care facility is being, or has been, operated without a license, it may report the results of its investigation to the attorney general of this state or the county attorney of the county where the child care facility is being operated for prosecution and request that an injunction be issued against the facility until a license is issued. In addition to the foregoing, the state board of public welfare, or its authorized agent, may institute such action at law or in equity as may appear necessary to enforce compliance with any provision of this act, or to enforce compliance with any order, rule, or regulation of the board pursuant to the provisions of this act, or to obtain a judicial interpretation of any of the foregoing, and in addition to any other remedy, the board, under unanimous consent of all its members, may apply to the district court of the district wherein the action arises for relief by injunction, mandamus, or any other appropriate remedy in equity without being compelled to allege or prove that an adequate remedy at law does not otherwise exist, nor shall the board be required to give or post bond in any action to which it is a party, whether upon appeal or otherwise. All legal actions may be brought by or against the board in the name of Montana state board of public welfare, and it shall not be necessary in any action to which the board is a party, that such action be brought by or against the state of Montana on relation of the Montana state board of public welfare. The board shall have the power to institute action by its own attorney or counsel, but it shall have the right, if it deems advisable, to call upon any county attorney to represent it in the district court of the county in which the action is taken, or the attorney general to represent it on appeal to the supreme court of Montana, or it may associate its own counsel with either in any court.

History: En. Sec. 11, Ch. 247, L. 1965.

CHAPTER 9

REPORTS OF CHILD NEGLECT OR ABUSE

Section 10-901. Declaration of policy.
10-902. Reports.
10-903. Action on reporting.
10-904. Immunity from liability.
10-905. Admissibility of evidence.

10-901. Declaration of policy. It is the policy of this state to provide for the protection of children who have had physical injury or willful neglect inflicted upon them and who, in the absence of appropriate reports concerning their condition and circumstances, may be further threatened by the conduct of those responsible for their care and protection.

History: En. Sec. 1, Ch. 178, L. 1965.

10-902. Reports. Any licensed physician and surgeon, resident or intern, who examines, attends or treats a child under the age of eighteen (18) years, or any registered nurse, practical nurse, any visiting nurse, any schoolteacher, or any social worker acting in his or her official capacity, having reason to believe that such child has had serious injury or

injuries inflicted upon him or her as a result of abuse or neglect, or has been willfully neglected, shall report the matter promptly to the county attorney in the county where such examination is made or such child is located; provided that when attendance with respect to a child is pursuant to the performance of services as a member of the staff of a hospital or similar institution, such staff member shall immediately notify the superintendent, manager, or other person in charge of the institution who shall make the report forthwith. If the report is not made in writing in the first instance, it shall be reduced to writing by the maker thereof as soon as it conveniently may be after it is initially made by telephone or otherwise, and it shall contain the names and addresses of the child and his or her parents or other persons responsible for his or her care; to the extent known, the child's age, the nature and extent of the child's injuries (including any evidence of previous injuries), and any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of the person or persons responsible therefor, and the facts which led the person reporting to believe that the child has suffered injury or injuries, or willful neglect, within the meaning of this act.

History: En. Sec. 2, Ch. 178, L. 1965.

10-903. Action on reporting. If from said report it shall appear that the child suffered such injury or injuries or willful neglect in the county in which the examination was made, the county attorney receiving the report shall immediately cause to be made the investigation hereinbelow referred to. If from such report it shall appear that the child suffered such injury or injuries or willful neglect in a county other than that in which the examination was made, the county attorney receiving the report shall forthwith transmit such report to the county attorney of the county in which it appears such injury or injuries or willful neglect were suffered, and the county attorney of the latter county shall immediately cause to be made the investigation herein referred to. In making such investigation of the report, the county attorney may utilize the services of the county welfare department and all other departments of his county. The investigation shall be made into the home of the child involved and into the circumstances surrounding the injury of the child, and into all other matters which, in the discretion of the county attorney shall be relevant and material to said investigation.

History;-En. Sec. 3, Ch. 178, L. 1965.

10-904. Immunity from liability. Anyone participating in the making of a report pursuant to the provisions of this act or participating in [a] judicial proceedings resulting therefrom shall be presumed to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed, unless the person acted in bad faith or with malicious purpose.

History: En. Sec. 4, Ch. 178, L. 1965.

Compiler's Note

The compiler has inserted brackets around the word "a" in the second line to indicate surplusage.

10-905. Admissibility of evidence. In any proceeding resulting from a report made pursuant to the provisions of this act or in any proceeding where such a report or any contents thereof are sought to be introduced into evidence, such report or contents thereof or any other fact or facts related thereto or to the condition of the child who is the subject of the report shall not be excluded on the ground that the matter is or may be the subject of a physician-patient privilege or similar privilege or rule against disclosure.

History: En. Sec. 5, Ch. 178, L. 1965.

CHAPTER 10

INTERSTATE COMPACT ON JUVENILES

Section 10-1001. Compact ratified—text.
10-1002. Juvenile compact administrator.
10-1003. Supplementary agreements.
10-1004. Financial arrangements.
10-1005. Responsibilities of state departments, agencies and officers.
10-1006. Additional procedures not precluded.

10-1001. Compact ratified—text. The Interstate Compact on Juveniles as contained herein is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows: The contracting states solemnly agree that:

ARTICLE I—FINDINGS AND PURPOSES

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The co-operation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to:

(1) co-operative supervision of delinquent juveniles on probation or parole;

(2) the return, from one state to another, of delinquent juveniles who have escaped or absconded;

(3) the return, from one state to another, of nondelinquent juveniles who have run away from home; and

(4) additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake co-operatively.

In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to co-operate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

ARTICLE II—EXISTING RIGHTS AND REMEDIES

That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

ARTICLE III—DEFINITIONS

That, for the purposes of this compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected or dependent children; "state" means any state, territory or possessions of the United States, the District of Columbia, and the commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

ARTICLE IV—RETURN OF RUNAWAYS

(a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile

that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding ninety (90) days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense of juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

(c) That "juvenile" as used in this article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

ARTICLE V—RETURN OF ESCAPEES AND ABSCONDERS

(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody of supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court,

who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding ninety (90) days, as will enable his detention under a detention order issued on a requisition pursuant to this article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a delinquent juvenile is returned under this article shall be responsible for payment of the transportation cost of such return.

ARTICLE VI—VOLUNTARY RETURN PROCEDURE

That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of article IV (a) or of article V (a), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned,

order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

ARTICLE VII—CO-OPERATIVE SUPERVISION OF PROBATIONERS AND PAROLEES

(a) That the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport

delinquent juveniles being so returned through any and all states party to this compact, without interference.

(c) That the sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

ARTICLE VIII—RESPONSIBILITY FOR COSTS

(a) That the provisions of article IV (b), V (b) and VII (d) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of cost, or responsibilities therefor.

(b) That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to articles IV (b), V (b) or VII (d) of this compact.

ARTICLE IX—DETENTION PRACTICES

That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

ARTICLE X—SUPPLEMENTARY AGREEMENTS

That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the co-operative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall:

(1) provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished;

(2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody;

(3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;

(4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;

(5) provide for reasonable inspection of such institutions by the sending state;

(6) provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and

(7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the co-operating states.

ARTICLE XI—ACCEPTANCE OF FEDERAL AND OTHER AID

That any state party to this compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

ARTICLE XII—COMPACT ADMINISTRATORS

That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XIII—EXECUTION OF COMPACT

That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

ARTICLE XIV—RENUNCIATION

That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending six (6) months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six (6) months' renunciation notice of the present article.

ARTICLE XV—SEVERABILITY

That the provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 76, L. 1967.

10-1002. Juvenile compact administrator. Pursuant to said compact, the governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of the compact. Said compact administrator shall serve subject to the pleasure of the governor. The compact administrator is hereby authorized, empowered and directed to co-operate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder.

History: En. Sec. 2, Ch. 76, L. 1967.

10-1003. Supplementary agreements. The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

History: En. Sec. 3, Ch. 76, L. 1967.

10-1004. Financial arrangements. The compact administrator, subject to the approval of the state controller may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder.

History: En. Sec. 4, Ch. 76, L. 1967.

10-1005. Responsibilities of state departments, agencies and officers. The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions.

History: En. Sec. 5, Ch. 76, L. 1967.

10-1006. Additional procedures not precluded. In addition to any procedure provided in articles IV and VI of the compact for the return of any runaway juvenile, the particular states, the juvenile or his parents, the courts or other legal custodian involved may agree upon and adopt any other plan or procedure legally authorized under the laws of this state and the other respective party states for the return of any such runaway juvenile.

History: En. Sec. 6, Ch. 76, L. 1967.

TITLE 11

CITIES AND TOWNS

Chapter 1. General powers of cities and towns, 11-101 to 11-104.
2. Classification and organization of cities and towns, 11-201 to 11-210.
3. Changes in classification of cities and towns, 11-301 to 11-307.
4. Additions of platted tracts to cities and towns, 11-401 to 11-405.
5. Alteration of boundaries, exclusion and inclusion of territory, 11-501 to 11-513.
6. Plats of cities and towns and additions thereto, 11-601 to 11-616.
7. Officers and elections, 11-701 to 11-734.
8. Executive powers—mayor—clerk—treasurer—chief of police and attorney, 11-801 to 11-811.
9. Powers of city and town councils, 11-901 to 11-989.
10. Powers of city and town councils (continued), 11-1001 to 11-1024.
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14. Budget system for cities and towns, 11-1401 to 11-1413.
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21. Municipal regulation of plumbing—plumbing license, Repealed—Section 12, Chapter 203, Laws 1949.
22. Special improvement districts, 11-2201 to 11-2288.
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31. Commission form of government, 11-3101 to 11-3137.
32. Commission-manager form of government, 11-3201 to 11-3286.
33. Commission-manager form of government (continued), 11-3301 to 11-3336.
34. City and county consolidated government, 11-3401 to 11-3460.
35. City and county consolidated government (continued), 11-3501 to 11-3560.
36. Metropolitan sanitary districts, Repealed—Section 14, Chapter 185, Laws 1957.
37. Off-street parking facilities, 11-3701 to 11-3725.
38. City or city-county planning boards, 11-3801 to 11-3858.
39. Urban renewal law, 11-3901 to 11-3920.
40. Open ditches, 11-4001 to 11-4006.
41. Industrial development projects, 11-4101 to 11-4110.
42. City-county building, 11-4201 to 11-4203.
43. City-county disaster emergency tax, 11-4301 to 11-4306.

CHAPTER 1

GENERAL POWERS OF CITIES AND TOWNS

Section 11-101. General powers.
11-102. Distribution of powers of cities.
11-103. Distribution of powers of towns.
11-104. City or town, how named, general corporate powers.

11-101. (4955) **General powers.** A city or town is a body politic and corporate, with the general powers of a corporation, and the powers specified or necessarily implied in this chapter, or in special laws heretofore enacted.

History: Ap. p. Secs. 323, 324, 5th Div. Comp. Stat. 1887; re-en. Sec. 4700, Pol. C. 1895; re-en. Sec. 3202, Rev. C. 1907; re-en Sec. 4955, R. C. M. 1921. Cal. Pol. C. Sec. 4354.

Construction of Section

This section, taken in connection with section 11-104, and subdivision 1 of section 11-901, constitutes a general grant of power, as well as a limitation of power, for authority is given to the city to pass all ordinances necessary for its government and management, and such ordinances shall not contravene constitutional or statutory provisions. City of Helena v. Kent, 32 M 279, 285, 80 P 259.

No consistency whatever has been observed in the legislative use of the term "town." State ex rel. Powers v. Dale, 47 M 227, 230, 131 P 670.

The entire municipal code is to be treated as one statute whose provisions are interdependent. Brown v. Foster, 48 M 114, 118, 135 P 993.

Doubt as to Power

A city has only such authority as is conferred upon it by express legislative declaration or necessary implication, and where there is a fair and reasonable doubt as to the existence of a particular power, it must be resolved against the municipality and the power denied. Davenport v. Kleinschmidt, 6 M 502, 527, 13 P 249; City of Helena v. Kent, 32 M 279, 283, 80 P 258; State ex rel. Quintin v. Edwards, 40 M 287, 303, 106 P 695; Helena Light & Ry. Co. v. City of Helena, 47 M 18, 31, 130 P 446; Shapard v. City of Missoula, 49 M 269, 278, 141 P 544; Sharkey v. City of Butte, 52 M 16, 19, 155 P 266; State ex rel. City of Billings v. Billings Gas Co., 55 M 102, 108, 173 P 799.

Judicial Notice

In an action against a city to recover damage for injuries to real property, an averment in the complaint that the city "is a municipal corporation, organized and existing under the laws of the state," was sufficient as against the objection that the pleading did not state a cause of action. Judicial notice will be taken of the fact that during a certain year a city was a municipal corporation existing under the laws of this state. Drew v. City of Butte, 44 M 124, 125, 119 P 279.

Mode of Exercising Power

When the mode of exercising any power is pointed out in the statute granting it to a municipal corporation, the mode thus prescribed must be pursued in all substantial particulars. McGillic v. Corby, 37 M 249, 254, 95 P 1063; Carlson v. City of Helena, 39 M 82, 109, 102 P 39; Shapard v. City of Missoula, 49 M 269, 278, 141 P 544.

Power Conferred by Grant or Implication

A city has no powers except such as are conferred upon it by legislative grant either directly or by necessary implication. Davenport v. Kleinschmidt, 6 M 502, 527, 13 P 249; City of Helena v. Kent, 32 M 279, 283, 80 P 259; Palmer v. City of Helena, 40 M 498, 507, 107 P 512; Sharkey v. City of Butte, 52 M 16, 19, 155 P 266; Stephens v. City of Great Falls, 119 M 368, 175 P 2d 408, 410.

Street Improvements

It is the duty of a city organized under the laws of this state to establish and improve streets, and damages can be recovered by one who is injured by its negligence in permitting its streets to become and remain in a dangerous condition. Sullivan v. City of Helena, 10 M 134, 141, 25 P 94; Snook v. City of Anaconda, 26 M 128, 134, 66 P 756; May v. City of Anaconda, 26 M 140, 142, 66 P 759; Ford v. City of Great Falls, 46 M 292, 306, 127 P 1004.

References

Davis v. Stewart, 54 M 429, 434, 171 P 281; State ex rel. McLeod v. District Court, 67 M 164, 168, 215 P 240; State ex rel. Altop v. City of Billings, 79 M 25, 33, 255 P 11; State ex rel. McIntire v. City Council of the City of Libby, 107 M 216, 219, 82 P 2d 587; Pollard v. Montana Liquor Control Board, 114 M 44, 46, 131 P 2d 974.

Collateral References

Municipal Corporations⇐57; Towns⇐1.

62 C.J.S. Municipal Corporations § 106; 87 C.J.S. Towns § 1.

37 Am. Jur. Municipal Corporations, p. 720, § 111 et seq.; p. 898, § 276 et seq.

Power of municipal corporation to accept and administer trust. 10 ALR 1368.

Liability of municipal corporation upon implied contract for use of property which it received under an invalid contract. 42 ALR 632.

Power of municipal corporation or authorities to employ detectives. 45 ALR 737.

Municipal power to acquire, maintain

and regulate airports. 69 ALR 316, 325; 83 ALR 333 and 99 ALR 173.

Implied power of municipality to operate nursery, quarry, gravel pit, etc., for production of material needed for carrying out powers expressly conferred upon it. 104 ALR 1342.

Power of city or its officials as to compromise of claims. 105 ALR 170 and 15 ALR 2d 1359.

Power of municipalities to engage in joint process or enterprise. 123 ALR 997.

Power of city to maintain or regulate tourist or trailer camps, motor courts, or motels. 22 ALR 2d 774.

11-102. (4956) **Distribution of powers of cities.** Every city has legislative, executive, and judicial power. Its legislative power is vested in a city council, its executive power in a mayor and his subordinate officers, and its judicial power in a police court.

History: Ap. p. Secs. 323, 324, 5th Div. Comp. Stat. 1887; en. Sec. 4701, Pol. C. 1895; re-en. Sec. 3203, Rev. C. 1907; re-en. Sec. 4956, R. C. M. 1921. Cal. Pol. C. Sec. 4355.

Delegation of Powers

A city cannot, even by express attempt, delegate any powers to others than those who are empowered by statute either as officers or employees to act for the city. Municipalities have only such powers as are expressly granted, and such powers cannot be delegated. A city is, of course, liable for damages arising out of the negligence of its officers and employees for acts done within the scope of their employment, but not otherwise. Lazich v. City of Butte, 116 M 386, 390, 154 P 2d 260.

Transfer to Successors

In the exercise of its legislative powers, a city is ruling its people, and is bound to transmit its powers of government to its successive sets of officers unimpaired. State ex rel. Great Falls Water Works v. City of Great Falls, 19 M 518, 534, 49 P 15.

References

State ex rel. O'Hern v. Loud, 92 M 307, 310, 14 P 2d 432.

Collateral References

Municipal Corporations⇨53, 54, 57.
62 C.J.S. Municipal Corporations § 109.

11-103. (4957) **Distribution of powers of towns.** Every town has legislative, executive, and judicial power. Its legislative power is vested in a town council, its executive power in a mayor and his subordinate officers, and its judicial power in justices of the peace of the township in which the town is situated.

History: Ap. p. Secs. 323, 324, 5th Div. Comp. Stat. 1887; en. Sec. 4702, Pol. C. 1895; re-en. Sec. 3204, Rev. C. 1907; re-en. Sec. 4957, R. C. M. 1921.

11-104. (4958) **City or town, how named, general corporate powers.** Every city or town organized under this title is entitled "the city of..... ....." (naming it), or "the town of....."(naming it), and by such name has perpetual succession; may sue and be sued in all courts and places, and in all proceedings whatsoever, and may have and use a common seal; may purchase, receive, have, take, hold, lease, use, and enjoy property of every name or description, and dispose of the same for the common benefit; and has such other powers as are incident to municipal corporations not inconsistent with the laws of the United States or the state.

History: Ap. p. Secs. 323, 324, 5th Div. Comp. Stat. 1887; en. Sec. 4703, Pol. C. 1895; re-en. Sec. 3205, Rev. C. 1907; re-en. Sec. 4958, R. C. M. 1921.

Extent of Powers

Municipalities may exercise only powers not in conflict with general law, unless additional power is plainly granted them. Stephens v. City of Great Falls, 119 M 368, 175 P 2d 408, 411.

Mandamus to Compel Payment of Bill

Mandamus will lie to compel a city to audit and pay a bill which it owes to a water company for the rent of hydrants, although this section provides that cities may sue or be sued. State ex rel. Great

Falls Water Works v. City of Great Falls, 19 M 518, 537, 49 P 15; State ex rel. Kaiser Water Co. v. City of Philipsburg, 23 M 16, 22, 57 P 405.

Rule That Creditor's Residence Is Place of Trial, Not Applicable to Municipal Corporations

The rule that where a contract for payment of money entered into between persons residing at different places and place of payment not agreed upon, creditor's residence becomes place of performance and therefore place of trial does not apply to municipal corporations. Lillis v. City of Big Timber, 103 M 206, 209, 62 P 2d 219.

Tax Sales

County acquiring tax deeds to lots, advertised them for sale but received no offer. Purchase of lots by city being authorized by city council because of housing and sanitary conditions, it had the right to sell them at varying prices, much higher than purchase price paid to county. Flom v. Unknown Heirs of Conrad, 132 M 574, 319 P 2d 499, 501, 502.

References

State ex rel. Rocky Mountain Bell Telephone Co. v. Mayor of Red Lodge, 30 M 338, 344, 76 P 758; City of Helena v. Kent, 32 M 279, 285, 80 P 258; State ex rel. Altop v. City of Billings, 79 M 25, 32, 255 P 11; State ex rel. McIntire v. City Council of the City of Libby, 107 M 216, 219, 82 P 2d 587.

Collateral References

Municipal Corporations⇦21, 57; Towns ⇦3.

62 C.J.S. Municipal Corporations §§ 35, 106; 87 C.J.S. Towns § 8.

CHAPTER 2

CLASSIFICATION AND ORGANIZATION OF CITIES AND TOWNS

Section 11-201. Cities and towns classified.
11-202. Basis of classification.
11-203. Organization of cities and towns—petition and census.
11-204. Election—how conducted.
11-205. First election for officers.
11-206. Officers elected and conduct of election.
11-207. Existing cities reorganized hereunder.
11-208. Such cities become cities of the first or second class or towns.
11-209. Old officers continue in office—election.
11-210. Effect of reorganization of cities and towns hereunder.

11-201. (4959) **Cities and towns classified.** Every city having a population of ten thousand or more is a city of the first class; every city having a population of less than ten thousand and more than five thousand is a city of the second class; every city having a population of less than five thousand and more than one thousand is a city of the third class; and every municipal corporation having a population of three hundred and less than one thousand is a town; provided, that every municipal corporation having a population of more than one thousand and less than twenty-five hundred, may by resolution adopted by the city or town council, as the case may be, pursuant to sections 11-301 to 11-305, be either a city or town. Nothing in this act shall be construed as affecting the status or classification of any existing city or town.

History: En. Sec. 4710, Pol. C. 1895; re-en. Sec. 3206, Rev. C. 1907; re-en. Sec. 4959, R. C. M. 1921; amd. Sec. 1, Ch. 202, L. 1947.

References

Davis v. Steward, 54 M 429, 434, 171 P 281; State ex rel. Keane v. Board of County Commrs., 83 M 540, 555, 273 P 290; Pollard v. Montana Liquor Control Board, 114 M 44, 46, 131 P 2d 974; Kunesh v. City of Great Falls, 132 M 285, 317 P 2d 297, 298.

Collateral References

Municipal Corporations⇦22; Towns⇦ 2, 13.

62 C.J.S. Municipal Corporations § 36; 87 C.J.S. Towns § 5.

11-202. (4960) **Basis of classification.** The census taken under the direction of Congress of the United States in the year eighteen hundred and ninety, and every ten years thereafter, shall be the basis upon which the respective populations of said municipal corporations shall be determined, unless a direct enumeration of the inhabitants thereof be made by the state or municipal corporation, in which case such direct enumeration constitutes such basis.

History: En. Sec. 4711, Pol. C. 1895; re-en. Sec. 3207, Rev. C. 1907; re-en. Sec. 4960, R. C. M. 1921.

11-203. (4961) **Organization of cities and towns—petition and census.** Whenever the inhabitants of any part of a county desire to be organized into a city or town, they may apply by petition in writing, signed by not less than fifty qualified electors, residents of the state, and residing within the limits of the proposed incorporation, to the board of county commissioners of the county in which the territory is situated, which petition must describe the limits of the proposed city or town, and of the several wards thereof, which must not exceed one square mile for each five hundred inhabitants resident therein. The petitioners must annex to the petition a map of the proposed territory to be incorporated, and state the name of the city or town. The petition and map must be filed in the office of the county clerk. Upon filing the petition, the board of county commissioners, at its next regular or special meeting, must appoint some suitable person to take a census of the residents of the territory to be incorporated. After taking the census, the person appointed to take the same must return the list to the board of county commissioners, and the same must be filed by it in the county clerk's office. No municipal corporation must be formed unless the number of inhabitants is three hundred or upwards.

History: En. Sec. 315, 5th Div. Comp. Stat. 1887; re-en. Sec. 4720, Pol. C. 1895; re-en. Sec. 3208, Rev. C. 1907; amd. Sec. 1, Ch. 56, L. 1909; re-en. Sec. 4961, R. C. M. 1921.

NOTE.—First general municipal incorporation act was that of Feb. 17, 1881 (L. 1881, pp. 13-38); superseded by Secs. 315-440, 5th Div. Comp. Stat. 1887. Many of the provisions of this act are so different from the present law that exact historical comparisons of the several sections cannot be made.

Presumption of Regularity of Proceedings

In a proceeding to enjoin a town from collecting municipal taxes on a forty-acre tract of land originally owned by an Indian ward on the ground that when the town was incorporated the consent of the federal government had not been given to include it in the city limits, held, under the rule that every presumption will be indulged in favor of the regularity of the proceedings if the corporate charter shows compliance with the applicable statutes (11-201 et seq.) particularly in view of section 93-1301-7, subdivision 5 that official duty is presumed regularly performed, judgment of dismissal affirmed. Ogle v. Town of Ronan, 112 M 394, 396, 117 P 2d 257.

References

Davis v. Stewart, 54 M 429, 434, 171 P 281.

Collateral References

Municipal Corporations⇦10-13; Towns ⇦3.

62 C.J.S. Municipal Corporations §§ 15-28; 87 C.J.S. Towns § 8.

37 Am. Jur. 626, Municipal Corporations, §§ 7-17.

11-204. (4962) **Election—how conducted.** After filing the petition and census, if there be the requisite number of inhabitants for the forma-

tion of a municipal corporation, as required in the preceding section, the county commissioners must call an election of all the qualified electors residing in the territory, described in the petition. Said election must be held at a convenient place within the territory described in the petition, to be designated by the board, notice of which election must be given by publication in some newspaper published within the limits of the territory to be incorporated, or, if none be published therein, by posting notice in three public places within said limits. The notice must be published thirty days prior to the election, and must specify the time and place when and where the same is held, and contain a description of the boundaries of the city or town. The board must appoint judges and clerks of election, who must qualify as required by law, and after the election they must report the result to the board, together with the ballots cast at said election. The ballots used at the election must be "For incorporation" or "Against incorporation," and all elections must be conducted as provided in Title 23 of this code.

History: En. Sec. 316, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; re-en. Sec. 4721, Pol. C. 1895; re-en. Sec. 3209, Rev. C. 1907; re-en. Sec. 4962, R. C. M. 1921.

Collateral References

Municipal Corporations⇨12 (8).
62 C.J.S. Municipal Corporations § 21.

11-205. (4963) **First election for officers.** When the incorporation of a city or town is completed, the board of county commissioners must give notice for thirty days in a newspaper published within the limits of the city or town, or, if none be published therein, by posting notices in six public places within the limits of the corporation, of the time and place or places of holding the first election for offices of the corporation. At such election all the electors qualified by the general election laws of the state, and who have resided within the limits of the city or town for six months, and within the limits of the ward for thirty days preceding the election, are qualified electors and may choose officers for the city or town, to hold office as prescribed in the next succeeding section.

History: Ap. p. Sec. 318, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; re-en. Sec. 4722, Pol. C. 1895; re-en. Sec. 3210, Rev. C. 1907; re-en. Sec. 4963, R. C. M. 1921.

Construction of Section

The expression "preceding the election," as used in this section, is equivalent in meaning to "next preceding the election." Dowty v. Pittwood, 23 M 113, 118, 57 P 727.

Collateral References

Municipal Corporations⇨13.
62 C.J.S. Municipal Corporations § 28.

11-206. (4964) **Officers elected and conduct of election.** At such election there must be elected, in a city of the first class, a mayor, a police judge, a city attorney, a city treasurer, a city marshal, and two aldermen from each ward into which the city may be divided; in a city of the second class, a mayor, a police judge, a city treasurer, a city marshal, and two aldermen from each ward; in a town, a mayor, and two aldermen from each ward, who hold office until the first Monday of May after the first annual election, and until their successors are elected and qualified. The persons so elected must qualify in the manner prescribed by law for county officers. The board of county commissioners must appoint judges

and clerks of election, and canvass and declare the result thereof. The election must be conducted in the manner required by law for the election of county officers.

History: En. Sec. 318, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; re-en. Sec. 4723, Pol. C. 1895; re-en. Sec. 3211, Rev. C. 1907; re-en. Sec. 4964, R. C. M. 1921.

11-207. (4965) **Existing cities reorganized hereunder.** All cities and towns existing or heretofore incorporated under the laws of the territory or state of Montana, either under general or special laws or charters, on the adoption of this code become and are incorporated under the provisions of this code relative to the government of cities and towns, and have the powers conferred, or that may hereafter be conferred by law, upon cities or towns of the class to which each may belong.

History: En. Sec. 5032, Pol. C. 1895; re-en. Sec. 3481, Rev. C. 1907; re-en. Sec. 4965, R. C. M. 1921.

Construction of Statute

The use of the term "incorporated," as applied to cities and towns, clearly connoting the opposite idea of unincorporated cities or towns, is clearly shown in this and other sections of the code. State ex rel. Powers v. Dale, 47 M 227, 229, 230, 131 P 670.

References

Drew v. City of Butte, 44 M 124, 125, 119 P 279.

Collateral References

Municipal Corporations⇐10-13.
62 C.J.S. Municipal Corporations § 15.

11-208. (4966) **Such cities become cities of the first or second class or towns.** Such cities or towns are and become cities of the first or second class or towns according to their population as determined by the federal census of 1890.

History: En. Sec. 5033, Pol. C. 1895; re-en. Sec. 3482, Rev. C. 1907; re-en. Sec. 4966, R. C. M. 1921.

Collateral References

Municipal Corporations⇐22.
62 C.J.S. Municipal Corporations § 36.

11-209. (4967) **Old officers continue in office—election.** All officers of such city or town holding office at the time of the adoption of this code remain in office until the next annual election and the first Monday of May next ensuing thereafter, and until their successors are elected and qualified. The duties and compensation of such officers and the liabilities of sureties on official bonds remain the same. All elections must be held under the provisions of this code relative to the government of cities and towns.

History: En. Sec. 5034, Pol. C. 1895; re-en. Sec. 3483, Rev. C. 1907; re-en. Sec. 4967, R. C. M. 1921.

Collateral References

Municipal Corporations⇐10-13.
62 C.J.S. Municipal Corporations § 15.

11-210. (4968) **Effect of reorganization of cities and towns hereunder.** Any such city or town is the identical corporation theretofore existing, and the reorganization hereunder in no way affects or impairs the title to any property owned or held by such city or town, or in trust therefor, or any debts, demands, liabilities, bonds, or other evidences of indebtedness, or other obligations in favor of or against such city or town, or any action or proceeding then pending, nor does it operate to repeal or affect in any manner any ordinance, resolution, or bylaw theretofore passed or adopted and remaining unrepealed, or to discharge any person from any liability,

civil or criminal, for any violation thereof; but such ordinances, resolutions, and bylaws, so far as the same are not in conflict with that part of this code relating to the government of cities and towns, are and remain in full force until repealed or amended, and all proceedings commenced theretofore, after the adoption of this code, must be conducted in accordance with the provisions of this code relating to the government of cities and towns.

History: En. Sec. 5035, Pol. C. 1895; re-en. Sec. 3484, Rev. C. 1907; re-en. Sec. 4968, R. C. M. 1921.

Construction of Section

This section is not curative in character, but was intended simply to preserve the statu quo of all municipal corporations in existence at the time of the adoption of the Code of 1895. It imparted no validity to a void ordinance providing compensation for the acting mayor of a municipality. McGillic v. Corby, 37 M 249, 254, 95 P 1063.

CHAPTER 3

CHANGES IN CLASSIFICATION OF CITIES AND TOWNS

Section 11-301. Proceedings for advancement and census.
11-302. Resolution declaring the advancement.
11-303. New officers—election.
11-304. Old ordinances, etc., remain in force until repealed.
11-305. Cities may be reduced in class—proceedings.
11-306. Disincorporation of city or town—proceeding.
11-307. Duty of county clerk and city or town treasurer—property and money to be turned over.

11-301. (4969) **Proceedings for advancement and census.** Whenever it manifestly appears to a city or town council from the last federal, state, county, city, or town census, that such city or town has the requisite population to entitle it to be classified as provided in section 11-201 of this code, such city or town must be advanced as provided in the next section.

History: En. Sec. 4950, Pol. C. 1895; amd. Sec. 1, p. 225, L. 1897; re-en. Sec. 3447, Rev. C. 1907; re-en. Sec. 4969, R. C. M. 1921.

Collateral References

Census⇦2, 8, 9; Municipal Corporations ⇦22.

14 C.J.S. Census § 2; 62 C.J.S. Municipal Corporations § 36.

11-302. (4970) **Resolution declaring the advancement.** If it appears by such census that the city or town contains the requisite population to be advanced, the council must thereupon, by resolution, declare that the town is advanced to a city of the first, second, or third class, or a city of the third class is advanced to a city of the second or first class, or a city of the second class is advanced to a city of the first class, as the case may be, and file a certified copy of such resolution in the office of the county clerk of the county and in the office of the secretary of state. Whereupon such town becomes a city of the first, second, or third class, and a city of the third class becomes a city of the second or first class, and a city of the second class becomes a city of the first class, as the case may be, to be governed under the provisions of this code relative to cities and towns.

History: En. Sec. 4951, Pol. C. 1895; amd. Sec. 2, p. 225, L. 1897; re-en. Sec. 3448, Rev. C. 1907; re-en. Sec. 4970, R. C. M. 1921.

11-303. (4971) **New officers—election.** The first election of officers of the new municipal corporation organized under the provisions of this

chapter must be at the first annual municipal election after such proceedings, and the old officers remain in office until the new officers are elected and qualified.

History: En. Sec. 4952, Pol. C. 1895; re-en. Sec. 3449, Rev. C. 1907; re-en. Sec. 4971, R. C. M. 1921.

11-304. (4972) **Old ordinances, etc., remain in force until repealed.** All ordinances, bylaws, and resolutions adopted by the old municipal corporation, as far as consistent with the provisions of this code relative to cities and towns, remain in force until repealed by the council of the new municipal corporation.

History: En. Sec. 4953, Pol. C. 1895; re-en. Sec. 3450, Rev. C. 1907; re-en. Sec. 4972, R. C. M. 1921.

11-305. (4973) **Cities may be reduced in class—proceedings.** Whenever it appears by the census taken by the United States, state, or otherwise, that the population of a city of the first or second class has decreased so as to be insufficient in number to entitle it to be a city of that class, the council must thereupon, by a resolution, declare that such city be reduced to a city of the second class or town, as the case may be. A certified copy of such resolution must be filed in the office of the county clerk and in the office of the secretary of state, and thereafter such city becomes a city of the second class or a town, as the case may be, to be governed under the provisions of this code relative to cities and towns. The provisions of sections 11-303 and 11-304 of this code apply to this section.

History: En. Sec. 4954, Pol. C. 1895; re-en. Sec. 3451, Rev. C. 1907; re-en. Sec. 4973, R. C. M. 1921.

11-306. (4974) **Disincorporation of city or town—proceeding.** Whenever it appears by such census that a city or town has a population of less than five hundred (500) inhabitants, the corporate existence of such city or town under this code relative to cities and towns, may be discontinued, upon the filing of a petition requesting that such corporate existence be discontinued, signed by at least two-thirds (2/3) of the resident freeholders of said city or town, as certified to by the county clerk and recorder of the county in which said city or town is situated, with the board of county commissioners of said county. Upon the filing of said petition as above provided, with the board of county commissioners, the said board must declare by resolution, that the incorporation thereof be discontinued, and must provide for the payment of the indebtedness of the same, and thereafter annually levy a tax on all the property situated within the limits of such city or town until all of such indebtedness is paid. The books, documents, records, papers and seal of such city or town must be deposited with the county clerk for safekeeping and reference, and the records of the police judge or police court must be deposited with one of the justices of the peace of the township in which such city or town is situated, who has power to execute and complete all unfinished business of such police judge or court.

History: En. Sec. 4955, Pol. C. 1895; re-en. Sec. 3452, Rev. C. 1907; re-en. Sec. 4974, R. C. M. 1921; amd. Sec. 1, Ch. 3, L. 1931.

Certificate of County Clerk

The county clerk is authorized to certify to the fact that the petition is signed by the required number of resident freeholders. State ex rel. Peck v. Anderson, 92 M 298, 301, 13 P 2d 231.

While ordinarily the certificate, made by the county clerk under this section, that the petition for disincorporation meets the requirements of the act, is conclusive and the board of county commissioners must make the order of disincorporation, mandamus should not issue to compel it to do so, if fraud or mistake on the part of the clerk be made apparent, the board having the implied power to disallow the petition if, at a hearing, wrongdoing or mistake be proven. State ex rel. Peck v. Anderson, 92 M 298, 301, 13 P 2d 231.

Investigation by County Clerk

In carrying out the command of this section, the county clerk has the implied power of investigating and determining who are the resident freeholders of the town the disincorporation of which is sought, whether or not the signatures to the petition are genuine, and whether or not the total number of bona fide signers thereof constitute at least two-thirds of the resident freeholders. State ex rel. Peck v. Anderson, 92 M 298, 301, 13 P 2d 231.

Withdrawal of Signatures of Petitioners

Signers of a petition for disincorporation may withdraw therefrom at any time before the county clerk has certified thereto and filed it with the board of county commissioners, unless they signed under misrepresentations of material facts to induce action on their part, in which event, if they act promptly, they may be allowed to withdraw after the date of filing, provided their proof of fraud be clear and convincing. State ex rel. Peck v. Anderson, 92 M 298, 301, 13 P 2d 231.

Collateral References

Municipal Corporations⇐49-51; Towns ⇐14.

62 C.J.S. Municipal Corporations §§ 101-105; 87 C.J.S. Towns § 17.

11-307. (4975) **Duty of county clerk and city or town treasurer — property and money to be turned over.** The county clerk must send a certified copy of the resolution of discontinuance to the secretary of state, and all moneys in the hands of the city or town treasurer must be paid to the county treasurer, which must be applied in payment of the indebtedness of such city or town, and all other property must be delivered to the board of county commissioners, which must be sold and disposed of for the purpose of paying such indebtedness.

History: En. Sec. 4956, Pol. C. 1895; re-en. Sec. 3453, Rev. C. 1907; re-en. Sec. 4975, R. C. M. 1921.

CHAPTER 4

ADDITIONS OF PLATTED TRACTS TO CITIES AND TOWNS

Section 11-401. Additions to cities or towns.
11-402. Additions, how made.
11-403. Extension of boundaries to include contiguous platted tracts or other parcels of land.
11-404. Land, when deemed contiguous.
11-405. Election on the question of annexation.

11-401. (4976) **Additions to cities or towns.** Whenever territory adjoining any incorporated city or town is surveyed, and laid off into streets or blocks as an addition thereto, upon filing the map or plat thereof in the office of the county clerk, said territory may become a part of such city or town, upon the approval of the mayor and a majority of the council endorsed thereon.

History: En. Sec. 4724, Pol. C. 1895; re-en. Sec. 3212, Rev. C. 1907; re-en. Sec. 4976, R. C. M. 1921.

Approval by Mayor and Council

The approval of the mayor and a majority of the council endorsed on the map or plat of an addition to a city or town is essential to bring the territory included therein within the jurisdiction of the council. Pool v. Town of Townsend, 58 M 297, 304, 191 P 385.

Construction of Statute

The use of the term "incorporated," as applied to cities and towns, clearly connoting the opposite idea of unincorporated cities or towns, is clearly shown in this and other sections of the code. State ex rel. Powers v. Dale, 47 M 227, 229, 230, 131 P 670.

Sewer Assessments

Where a certain tract of land was not a part of the city, and the owner was not entitled to the privileges of an owner of city lots, he was under no obligation to pay special assessments for a sewer constructed by the city in the street in front of such land. Farlin v. Hill, 27 M 27, 36, 69 P 237. See Sharkey v. City of Butte, 52 M 16, 21, 155 P 266.

References

Barnard Realty Co. v. City of Butte, 48 M 102, 113, 136 P 1064; De Sandro v. Missoula Light & Water Co., 48 M 226, 234, 136 P 711.

Collateral References

Municipal Corporations⚿43.

62 C.J.S. Municipal Corporations § 83.

37 Am. Jur. 639, Municipal Corporations, §§ 23-34.

Capacity to attack the fixing or extension of municipal limits or boundary. 13 ALR 2d 1279.

11-402. (4977) **Additions, how made.** The council has control of all such additions, and power by ordinance to compel the owners of these additions to lay out streets, avenues, and alleys, so as to have the same correspond in width and direction and be continuations of the streets, avenues, and alleys in the city or town, or in the addition thereto, contiguous to or near the proposed addition. The owner of any addition has no rights or privileges unless the terms and conditions of the ordinance are complied with, and the plat thereof has been submitted to and approved by the mayor and council, and such approval endorsed thereon.

History: En. Sec. 4725, Pol. C. 1895; re-en. Sec. 3213, Rev. C. 1907; re-en. Sec. 4977, R. C. M. 1921.

References

Barnard Realty Co. v. City of Butte, 48 M 102, 113, 136 P 1064; De Sandro v. Missoula Light & Water Co., 48 M 226, 234, 136 P 711.

11-403. (4978) **Extension of boundaries to include contiguous platted tracts or other parcels of land.** (1) Cities or towns of the first class. Any tracts or parcels of land, which have been or may hereafter be platted into lots or blocks, streets, and alleys, or platted for parks, and the map or plat thereof filed in the office of the county clerk and recorder of the county in which the same are situated, or any unplatted land that has been surveyed and for which a certificate of survey has been filed, as provided in these codes, and which platted or unplatted land shall be contiguous to any incorporated city of the first class, may be embraced within the corporate limits thereof, and the boundaries of such city of the first class extended so as to include the same in the following manner: When, in the judgment of any city council of a city of the first class, expressed by a resolution duly and regularly passed and adopted, it will be to the best interest of such city and the inhabitants of any contiguous platted tracts or parcels of land, or unplatted land for which a certificate of survey has been filed, that the boundaries of such city shall be extended, so as to include the same within the corporate limits thereof, the city clerk of

such city shall forthwith cause to be published in the newspaper published nearest such platted tracts or parcels of land, or unplatted land for which a certificate of survey has been filed, at least once a week for two successive weeks, a notice which shall be to the effect that such resolution has been duly and regularly passed, and that for a period of twenty (20) days after the first publication of such notice, such city clerk will receive expressions of approval or disapproval, in writing, of the proposed extensions of the boundaries of such city of the first class, from resident freeholders of the territory proposed to be embraced therein. The clerk shall, at the next regular meeting of the city council of such city of the first class after the expiration of said twenty (20) days, lay before the same all communications in writing by him so received for its consideration, and if, after considering the same, such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city of the first class shall be extended so as to embrace and include such platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed, the time when the same shall go into effect to be fixed by such resolution; provided however, that land used for industrial or manufacturing purposes shall not be included in such city under the provisions of this section without the consent in writing of the owners of such land, and further provided, that such resolution shall not be adopted by such council if disapproved, in writing, by a majority of the resident freeholders, if any, of the territory proposed to be embraced and no further resolutions relating to the annexation of said territory or any portion thereof may be considered or acted upon by the council on its own initiative and without petition, for a period of one year from the date of disapproval.

Provided also, that cities of the first class may include as part of such city any platted or unplatted tract or parcel of land that is wholly surrounded by such city upon passing a resolution advertising and upon passing a further resolution or following such advertising, all in the manner aforesaid, and such land shall be annexed, if so resolved, whether or not a majority of the resident freeholders, if any, of the land to be annexed object; provided, however, that land used for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose or for the purpose of maintaining or operating a golf or country club, an athletic field or aircraft landing field, a cemetery or a place for public or private outdoor entertainment or any purpose incident thereto, shall not be annexed under this provision.

(2) Cities and towns of the second and third class. Any tracts or parcels of land, which shall be contiguous to any incorporated cities or towns of the second and third class, may be embraced within the corporate limits thereof and the boundaries of such cities or towns of the second and third class extended so as to include the same in the following manner: When, in the judgment of any such city or town council, expressed by resolution duly and regularly passed and adopted, it will be to the best interest of such city, or town and the inhabitants thereof, and of the inhabitants of any contiguous tracts or parcels of land, as aforesaid, that the boundaries of such city or town shall be extended, so as to include

the same within the corporate limits thereof, the city or town clerk of such city or town shall forthwith notify in writing all property holders within the boundaries of the territory proposed to be embraced, and cause to be published in the newspaper published nearest such tracts or parcels of land, at least once a week for two successive weeks, a notice which shall be to the effect that such resolution has been duly and regularly passed and that for a period of twenty (20) days after the first publication of such notice, such city or town clerk will receive expressions of approval or disapproval, in writing, of the proposed extensions of the boundaries of such city or town, from freeholders of the territory proposed to be embraced therein. The clerk shall, at the next regular meeting of the city or town council after the expiration of said twenty (20) days, lay before the same all communications in writing by him so received for its consideration, and if, after considering the same, such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city or town of the second or third class, shall be extended so as to embrace and include such tracts or parcels of land, the time when the same shall go into effect to be fixed by such resolution; provided, that such resolution shall not be adopted by such council, if disapproved, in writing, by a majority of the freeholders of the territory proposed to be embraced.

(3) Whenever two or more adjacent tracts taken as a whole shall adjoin the city, they may be included in one resolution under subdivision (2) hereof, although one or more of said tracts taken alone may not be adjacent to the corporate limits as then existing.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R. C. M. 1921; amd. Sec. 1, Ch. 52, L. 1925; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967.

Cross-Reference

Contiguous land owned by government, annexation, secs. 11-511 to 11-513.

Constitutionality

Annexation, in the absence of a constitutional prohibition, is a political matter exclusively for the legislature to control, and, unless specifically restrained by the constitution, the legislature can authorize annexation without the consent, or even against the wishes, of the people living in the annexed corporation or territory. Harrison v. City of Missoula, 146 M 420, 407 P 2d 703.

Constitutionality—Class Legislation

There is no objection to class legislation pertaining to this section, since the legislature, in its discretion, by adding "if any" after the words "resident freeholders" clearly based the right to protest against annexation upon the valid distinction of residency. Harrison v. City of Missoula, 146 M 420, 407 P 2d 703.

Appeal

In taxpayers' suit opposing annexation of a city subdivision where trial court found that less than the required majority had protested, it must be presumed on appeal that the lower court's proceedings are regular and contain no substantial error until otherwise shown preponderantly by the plaintiff. Kunesh v. City of Great Falls, 132 M 285, 317 P 2d 297, 298.

Burden of Proof

A first class city has the burden of determining if a majority of the resident freeholders have protested the proposed annexation. State ex rel. Konen v. City of Butte, 144 M 95, 394 P 2d 753, 755.

Construction of Statute

The use of the term "incorporated," as applied to cities and towns, clearly connoting the opposite idea of unincorporated cities and towns, is clearly shown in this and other sections of the code. State ex rel. Powers v. Dale, 47 M 227, 229, 230, 131 P 670.

Description of Land Annexed

In annexation proceedings by a second class city the description of the land was adequate, although it omitted township and range, where the resolution stated that the land was contiguous to the bound-

aries of the city and referred to the intersections of streets. Klamm v. City of Miles City, 138 M 65, 353 P 2d 752, 754.

Disapproval by Residents

Residents of an area sought to be annexed must register their disapproval by showing such disapproval in writing to the city clerk as required by statute. They cannot do so in courts of law. Penland v. City of Missoula, 132 M 591, 318 P 2d 1089, 1092.

Time limitation for disapproval cannot be extended. Penland v. City of Missoula, 132 M 591, 318 P 2d 1089, 1092, 1093.

The filing of sufficient protests by resident freeholders of a first class city deprives the city council of authority to do anything except to sustain the protests and terminate the proceedings. State ex rel. Konen v. City of Butte, 144 M 95, 394 P 2d 753, 756.

If the majority of the resident freeholders of a first class city protest proposed annexation, the city is without jurisdiction to proceed with the annexation. State ex rel. Konen v. City of Butte, 144 M 95, 394 P 2d 753, 756.

Discretion of City Council

City council has the discretion to determine whether or not it is in the best interests of the city and the inhabitants of the area that it be annexed. Penland v. City of Missoula, 132 M 591, 318 P 2d 1089, 1092, distinguished in 138 M 65, 67, 353 P 2d 752, 753.

If less than a majority of the resident freeholders of a first class city protest, the city may, in its discretion, annex the area in question. State ex rel. Konen v. City of Butte, 144 M 95, 394 P 2d 753, 756.

Eligibility for Incorporation

The language of this section (since amended) is unequivocal, declaring that before any territory is eligible for incorporation in a city by an extension of the city's boundaries, such territory must be (a) platted into lots or blocks, streets, and alleys; (b) a map or plat thereof must be on file with the county clerk and recorder; and (c) the territory must be contiguous to the city's limits. Sharkey v. City of Butte, 52 M 16, 20, 155 P 266.

Evidence of Benefits

In action for injunctive relief against resolution of intention of city council to annex land court properly excluded all evidence relating to benefits. Penland v. City of Missoula, 132 M 591, 318 P 2d 1089, 1092.

Remedy for Illegal Inclusion

The remedy of injunction is available to one whose taxes would be increased by an illegal inclusion of his property within the limits of a city. Sharkey v. City of Butte, 52 M 16, 23, 155 P 266.

The recital in a city council's resolution that territory proposed to be annexed to the city was contiguous and platted, when such was not the fact, could not inure to the city's benefit, or preclude a resident of the territory attempted to be annexed, from any available remedy he would otherwise have. Sharkey v. City of Butte, 52 M 16, 23, 155 P 266.

Where the purpose of a taxpayer's action was to have proceedings looking to the annexation of territory to a city declared void ab initio, and the city enjoined from assuming jurisdiction over the persons or property situated within unplatted territory illegally sought to be included, the attack was direct and not collateral. Sharkey v. City of Butte, 52 M 16, 23, 155 P 266.

Resident Freeholder

A freeholder becomes a resident under section 83-303 upon union of act and intent. If the intention to establish a permanent residence be ascertained, the recency of the establishment is immaterial. Kunesh v. City of Great Falls, 132 M 285, 317 P 2d 297, 301.

A resident freeholder qualified to protest annexation may be defined as one who is a resident within the area to be annexed, holding a present legal title to a freehold estate in real property located within the area to be annexed. Kunesh v. City of Great Falls, 132 M 285, 317 P 2d 297, 301.

Date through which timely protest could be received, set forth in the notice of resolution of intention to annex, as protest date, determines qualifications of resident freeholders to protest annexation. Kunesh v. City of Great Falls, 132 M 285, 317 P 2d 297, 301.

It is not necessary for resident freeholder to reside upon his freehold in order to protest annexation. Kunesh v. City of Great Falls, 132 M 285, 317 P 2d 297, 301.

Resolution of Intention

Exercise of discretion of city council in passing resolution of intention to annex land may be reviewed by court only when, and if, they have proceeded contrary to statute. Penland v. City of Missoula, 132 M 591, 318 P 2d 1089, 1092.

Termination of Proceedings

Where a majority of the resident freeholders of a first class city validly protested proposed annexation under subdivision (1) of this section, but city council instead of terminating the annexation proceedings took arbitrary action, mandamus was proper to compel council to terminate the process. The Uniform Declaratory Judgments Act (93-8901 to 93-8916) did not furnish the protestants a plain, speedy

and adequate remedy. State ex rel. Konen v. City of Butte, 144 M 95, 394 P 2d 753, 757.

Unplatted Territory

A city may not extend its boundaries so as to include unplatted ground (since amended), and proceedings had to annex territory, a portion of which was unplatted, contrary to the provisions hereof, were void in toto. Sharkey v. City of Butte, 52 M 16, 21, 155 P 266.

Unplatted territory may be annexed by a second class city. Klamm v. City of Miles City, 138 M 65, 353 P 2d 752, 753.

Collateral References

Municipal Corporations⇐29, 38.
62 C.J.S. Municipal Corporations § 42.

Construction of regulations as to subdivision maps or plats with respect to question of effect on corporate limits of filing or vacation of plat. 11 ALR 2d 567, 598.

11-404. Land, when deemed contiguous. Tracts or parcels of land, proposed to be annexed to a city or town, under the provision of section 11-403, shall be deemed contiguous to such city or town, even though such tracts or parcels of land may be separated from such city or town by a street or other roadway, irrigation ditch, drainage ditch, stream, river, or a strip of unplatted land too narrow or too small to be platted.

History: En. Sec. 1, Ch. 95, L. 1945; amd. Sec. 1, Ch. 16, L. 1955.

Strip of Land too Small for Platting

Triangle piece of unplatted land separated area sought to be annexed into two tracts of land. Although the triangular strip was a part of a much larger tract, that fact was immaterial. The only part of the land which was significant was the strip separating the area sought to be annexed, not the larger area of which the separating strip was a part. If the triangular separating strip is too small or too narrow to be platted, than the tracts separated by it will be deemed contiguous. Penland v. City of Missoula, 132 M 591, 318 P 2d 1089, 1093.

11-405. (4979) **Election on the question of annexation.** When a city or town desires to be annexed to another and contiguous city or town, the council of each thereof must appoint three commissioners to arrange and report to the municipal authorities respectively, the terms and conditions on which the annexation can be made, and if the city or town council of the municipal corporation to be annexed approves of the terms thereof, it must by ordinance so declare, and thereupon submit the question of annexation to the electors of the respective cities or towns. If a majority of the electors vote in favor of annexation, the council must so declare, and a certified copy of the proceedings for annexation and of the ordinances must be filed with the clerk of the county in which the cities or towns so annexed are situated, and when so filed the annexation is complete, and the city or town to which the annexation is made has power, in addition to other powers conferred by this title, to pass all necessary ordinances to carry into effect the terms of the annexation. Such annexations do not affect or impair any rights, obligations, or liabilities then existing, for or against either of such cities or towns.

History: En. Sec. 322, 5th Div. Comp. Stat. 1887; re-en. Sec. 4727, Pol. C. 1895; re-en. Sec. 3215, Rev. C. 1907; re-en. Sec. 4979, R. C. M. 1921.

Collateral References

Municipal Corporations⇐34.
62 C.J.S. Municipal Corporations § 58.

Validity of municipal bond issue as against owners of property annexation of which to municipality became effective after date of election at which issue was approved by voters. 10 ALR 2d 559.

CHAPTER 5

ALTERATION OF BOUNDARIES, EXCLUSION AND INCLUSION OF TERRITORY

Section 11-501. Alteration of boundaries of cities and towns—exclusion of portion.
11-502. Petition—contents—notice—consideration of communications—action of council—meaning of terms "contiguous" and "adjacent."
11-503. Resolution and map to be filed—effective date of resolution.
11-504. Liability of excluded territory for existing indebtedness.
11-505. Jurisdiction of city or town for levying tax to pay existing indebtedness.
11-506. Alteration of boundaries of cities and towns—inclusion of territory—petition and election.
11-507. Submission of question of annexation—election, how conducted and returned—annexation, when complete.
11-508. Territory which may not be annexed.
11-509. Lands used for certain purposes may not be annexed.
11-510. Act not applicable to cities of less than 20,000 and not more than 35,000 population.
11-511. Contiguous land owned by government—desire for annexation—procedure.
11-512. Land deemed contiguous.
11-513. Validation of prior annexations of government land.

11-501. (4979.1) **Alteration of boundaries of cities and towns—exclusion of portion.** The boundaries of any incorporated city or town of this state may be altered and a portion of the territory thereof excluded therefrom, and the councils of such cities and towns are hereby granted power to enact resolutions for that purpose after proceedings had as required in this act.

History: En. Sec. 1, Ch. 33, L. 1927.

Collateral References

Municipal Corporations⇐26, 27; Towns ⇐6-8.

62 C.J.S. Municipal Corporations § 41; 87 C.J.S. Towns § 18.

37 Am. Jur., Municipal Corporations, pp. 632-634, §§ 15, 16; pp. 639-661, §§ 23-42.

Liability in respect of taxes derived from territory improperly annexed to municipal or political division. 35 ALR 477.

Rights and remedies of creditor of municipal corporation which is dissolved or combined with another municipal body. 47 ALR 128.

Facts warranting extension or reduction of municipal boundaries. 62 ALR 1011.

Constitutionality of statute for formation or change of municipal corporations as affected by objection that they impose nonjudicial functions on courts. 69 ALR 266, 290.

Right of political division to challenge acts or proceedings by which its boundaries are affected. 86 ALR 1367, 1374.

Power of legislature to detach land from municipal corporations. 117 ALR 267.

Injunction against municipal tax upon ground involving attack on inclusion of property within municipal boundaries. 129 ALR 255, 261.

Capacity to attack the fixing or extension of municipal limits or boundary. 13 ALR 2d 1279.

11-502. (4979.2) **Petition—contents—notice—consideration of communications—action of council—meaning of terms "contiguous" and "adjacent."** (1) A petition in writing signed by a number of the qualified electors residing within the corporate limits of such city or town, equal to a majority of the votes cast at the last city election held therein, or by the owners of not less than three-fourths in value of the territory sought to be excluded, shall be filed with clerk of such city or town. Such petition shall set out and describe the territory to be excluded from the corporate limits, which territory must be on the border of such city or town, and the alteration of the boundaries desired by the petitioners, together with the boundaries of the city or town as it will exist after such change is made,

and shall pray that the council of such city or town shall enact a resolution altering the boundaries of such city or town and excluding therefrom the territory therein described. Said petition shall also describe the streets, alleys, avenues and public places, if any, in the territory sought to be excluded, and shall distinctly specify which of said streets, avenues, alleys or public places are to be retained for the use of the public after the territory has been excluded from the corporate limits of such city or town. Such petition shall be presented to the council of such city or town at the next regular meeting after the filing thereof.

(2) If said council by resolution, duly and regularly passed and adopted, shall find that said petition is signed by the requisite number of qualified electors of said city or town, or by the owners of not less than three-fourths in value of the territory to be excluded, and that the territory petitioned to be excluded is within the corporate limits and on the border thereof, and that the granting of said petition will be to the best interest of such city or town and the inhabitants thereof, and will not materially mar the symmetry of such city or town, the city or town clerk of such city or town shall forthwith cause to be published in the newspaper nearest such territory petitioned to be excluded, at least once a week for two successive weeks, a notice which shall be to the effect that such resolution has been duly and regularly passed and that for a period of twenty days after the first publication of such notice, such city or town clerk will receive expressions of approval or disapproval, in writing, of the proposed alterations of the boundaries of such city or town by the exclusion of the territory petitioned to be excluded, from the owners of the territory proposed to be excluded.

(3) The clerk shall, at the next regular meeting of the city or town council, after expiration of the said twenty days, lay before the same all communications in writing by him so received for its consideration, and if, after considering the same, such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city or town shall be altered so as to exclude the territory described in said petition. Said resolution shall also describe the streets, avenues, alleys and public places in said excluded territory which are to be vacated and abandoned and, upon the filing of the certified copy of the resolution as hereinafter provided, all such streets, avenues, alleys and public places, unless expressly excepted in said resolution, shall be deemed to be vacated and abandoned and the title thereto shall revert to the owners of the adjacent property. Such resolution shall not be finally adopted by such council after written disapproval by a majority of the owners in value of the territory proposed to be excluded, nor after written disapproval or protest by a majority of the owners in value of property within the corporate limits of said city or town immediately adjacent and contiguous to the territory sought to be excluded. That for the purposes of this act the words "contiguous" and "adjacent" shall include property on the opposite side of a street or alley from the property sought to be withdrawn.

History: En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935.

Collateral References

Municipal Corporations⇨56.

62 C.J.S. Municipal Corporations § 56.

11-503. (4979.3) **Resolution and map to be filed—effective date of resolution.** Within thirty days after the passage and approval of said resolution, a copy thereof duly certified by the clerk of said city or town, together with a map showing the corporate limits of said city or town as altered and changed, shall be filed in the office of the county clerk and recorder of the county in which said city or town is located. Said resolution shall become effective thirty days after its passage and approval, and thereafter the boundary of said city or town shall be as set forth in said resolution.

History: En. Sec. 3, Ch. 33, L. 1927.

11-504. (4979.4) **Liability of excluded territory for existing indebtedness.** Such alteration shall not relieve any territory excluded from the limits of a city or town, from its liability on account of any outstanding bonded indebtedness of such city or town, or any indebtedness of any improvement district of which the excluded territory is a part, existing at the time of the passage of such resolution.

History: En. Sec. 4, Ch. 33, L. 1927.

Collateral References

Municipal Corporations⇐36 (3).
62 C.J.S. Municipal Corporations § 78.

11-505. (4979.5) **Jurisdiction of city or town for levying tax to pay existing indebtedness.** For the purpose of levying any tax or assessment necessary for the collection of any of the indebtedness specified in section 11-504, the territory so excluded shall be and remain under the jurisdiction of such city or town.

History: En. Sec. 5, Ch. 33, L. 1927.

Collateral References

Municipal Corporations⇐36 (4).
62 C.J.S. Municipal Corporations § 79.

11-506. Alteration of boundaries of cities and towns—inclusion of territory—petition and election. (1) The boundaries of any incorporated town or city, whether heretofore or hereafter formed, may be altered and new territory or territories annexed thereto, incorporated and included therein, and made a part thereof, upon proceedings being had and taken as in this act provided. The council, or other legislative body of any such municipal corporation, upon receiving a written petition therefor containing a description of the new territory or territories asked to be annexed to such corporation, and signed by not less than thirty-three and one-third per cent (33 1/3%) of the resident freeholder electors of the territory proposed to be annexed must, without delay, submit to the electors of such municipal corporation and to the electors residing in the territory or territories proposed by such petition to be annexed to such corporation, the question whether such new territory or territories shall be annexed to, incorporated in, and made a part of said municipal corporation.

(2) Such question may be so submitted at the next general municipal election to be held in such municipal corporation, or it may be so submitted prior to such general election, either at a special election called therein for that purpose, or at any other municipal election therein, ex-

cept an election at which the submission of such question is prohibited by law; and such council or legislative body is hereby empowered to and it shall be its duty to cause notice to be given of such election by the publication of a notice thereof in a newspaper printed and published in such municipal corporation at least once a week for a period of three (3) successive weeks next preceding the date of such election, or if there is no newspaper printed in such municipal corporation, then such notice shall be published in like manner for a like period in the nearest town or city in the county in which said territory or territories to be annexed is situated, in which such newspaper is printed. Such notice shall distinctly state the proposition to be submitted, i. e., that it is proposed to annex to, incorporate in, and make a part of such municipal corporation the territory or territories sought to be annexed, specifically describing the boundaries thereof; and in said notice the qualified electors of said municipal corporation, and the qualified electors residing in said territory or territories so proposed to be annexed, shall be invited to vote upon such proposition by placing upon their ballots the words "for annexation" or "against annexation," or words equivalent thereto.

(3) Such council or legislative body is hereby empowered, and it shall be its duty, to establish, and in such notice of election designate the voting precinct or precincts, the date of said election, the place or places at which, and the hours between which the polls will be opened for such election, and such other information regarding said election as the said council or legislative body may deem proper. Such place or places shall be that or those commonly used as voting places within such municipal corporation, and also that or those commonly used by the electors residing in such new territory or territories.

History: En. Sec. 1, Ch. 168, L. 1945.

11-507. Submission of question of annexation—election, how conducted and returned—annexation, when complete. (1) If the question of annexation is submitted at a special election called for such purpose, the city or town council, or other legislative body, shall fix the hours through which the polls are to be kept open, which shall be not less than eight (8), and which must be stated in the notice of election, and may appoint a smaller number of judges than is required at a general city or town election, but in no case shall there be less than three (3) judges in a precinct and such judges shall act as their own clerks. If the question of annexation is submitted at a general city or town election, the polls shall be kept open during the same hours as are fixed for the general election, and the judges and clerks for such general election shall act as the judges and clerks thereof.

(2) Whenever the question of annexation under this title is submitted at either a general city or town election, or at a special election, separate ballots, white in color and of convenient size, shall be provided therefor. The election shall be conducted, and the returns made in the same manner as other city or town elections; and all election laws governing city and town elections shall govern in so far as they are applicable, but if such question be submitted at a general city or town election, the votes

thereon must be counted separately, and separate returns must be made by the judges and clerks at such election. If the said annexation election is held at the same time as a general city or town election, then the returns shall be canvassed by the city or town council at the same time as the returns for such general election; but if the question of annexation is submitted at a special election, then the city or town council shall meet within ten (10) days after the date of the holding of such special election and canvass the returns.

(3) If it is found that a majority of such votes were cast in favor of the annexation, the city or town council, or other legislative body shall, at a regular or special meeting held within thirty (30) days thereafter, pass and adopt a resolution providing for such annexation. Such resolution shall recite that a petition has been filed with the said council or other legislative body with a sufficient number of signatures of thirty-three and one-third per cent (33 1/3%) of the resident freeholder electors of the territory proposed to be annexed; a description of the boundaries of the territory or territories to be annexed; a copy of the resolution ordering a general or special election thereof, as the case may be; a copy of the notice of such election; the time and result of the canvass of the votes received in favor of annexation, and the number thereof cast against annexation; and that the boundaries of such city or town, by such resolution, shall be extended so as to embrace and include such territory or territories as the same are described in the petition for annexation, which said resolution shall be incorporated in the minutes of said council or legislative body.

(4) The clerk or other officer performing the duties of clerk of such council or legislative body, shall promptly make and certify under the seal of said municipal corporation, a copy of said record so entered upon said minutes, which document shall be filed with the clerk of the county in which the city or town to which said territory or territories are sought to be annexed, is situated. From and after the date of the filing of said document in the office of the said county clerk, the annexation of such territory or territories so proposed to be annexed shall be deemed and shall be complete and thenceforth such annexed territory or territories shall be, to all intents and purposes, a part of said municipal corporation, and the said city or town to which the annexation is made, has the power to pass all necessary ordinances pertaining thereto.

History: En. Sec. 2, Ch. 168, L. 1945.

Collateral References

Municipal Corporations⇐34.
62 C.J.S. Municipal Corporations § 58.

Proper remedy or procedure for attacking legality of proceedings annexing territory to municipal corporation. 18 ALR 2d 1255.

11-508. Territory which may not be annexed. No territory which, at the time such petition for such proposed annexation is presented to such council or legislative body, forms any part of any incorporated town or city, shall be annexed under the provisions of this act.

History: En. Sec. 3, Ch. 168, L. 1945.

11-509. Lands used for certain purposes may not be annexed. No parcel of land which, at the time such petition for such proposed annexa-

tion is presented to such council or legislative body, is used in whole or in part for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose or any purpose incident thereto, shall be annexed under the provisions of this act.

History: En. Sec. 4, Ch. 168, L. 1945.

11-510. Act not applicable to cities of less than 20,000 and not more than 35,000 population. This act shall not be applicable to cities having a population, as shown by the last preceding federal census, of less than twenty thousand (20,000) and not more than thirty-five thousand (35,000) and shall not repeal section 11-403 having reference to extension of the corporate limits of cities of the first, second and third classes to include contiguous land, but is intended and does provide an alternative method for the annexation of territory or territories to municipal corporations. When any proceedings for annexation of territory or territories to any municipal corporation are commenced under this act the provisions of this act and of such amendments thereto as may thereafter be adopted, and no other, shall apply to such proceedings.

History: En. Sec. 5, Ch. 168, L. 1945.

11-511. Contiguous land owned by government—desire for annexation—procedure. Whenever any land contiguous to a municipality is owned by the United States or by the state of Montana, or by any agency, instrumentality, or political subdivision of either, or whenever any of the foregoing have a beneficial interest in any land contiguous to a municipality, such land may be incorporated and included in the municipality to which it is contiguous, and may be annexed thereto and made a part thereof, in the following manner:

1. The administrative head of the owner of the land, or the administrative head of the holder of a beneficial interest in the land, shall file with the clerk of the municipality a description of the land, a certification of ownership or of beneficial interest therein, and a statement that the owner of, or the holder of, the beneficial interest in the land desires to have it annexed. Whereupon, the governing body of the municipality shall pass a resolution reciting its intention to annex the land and setting a time and place for a public hearing thereon.

2. The clerk of the municipality shall forthwith cause to be published in the newspaper nearest such land, at least once a week for two successive weeks, a notice that such resolution has been duly and regularly passed, and that for a period of twenty (20) days after the first publication of such notice, such clerk will receive expressions of approval or disapproval, in writing, of the proposed alterations of the boundaries of the municipality. Said notice shall also state the time and place set for the public hearing on the proposed annexation.

3. At the time and place set for the public hearing aforesaid, the governing body of the municipality shall hear all persons and all things relative to the proposed annexation, and if the governing body shall find that it is to the best interests of the municipality and its inhabitants to annex the land, it shall adopt a resolution of annexation of the land.

4. Within thirty (30) days after the passage and approval of said resolution, a copy thereof duly certified by the clerk of the municipality, together with a map showing the corporate limits of said municipality as altered and changed, shall be filed in the office of the county clerk and recorder of the county in which said municipality is located. Said resolution shall become effective thirty (30) days after its passage and approval, and thereafter the boundary of said municipality shall be as set forth in said resolution.

History: En. Sec. 1, Ch. 189, L. 1957.

References

Harrison v. City of Missoula, 146 M 420, 407 P 2d 703.

11-512. Land deemed contiguous. The land proposed to be annexed to a municipality under the provisions of this act shall be deemed contiguous to such municipality, even though such land may be separated from such municipality by a street, or other roadway, a sidewalk, or by a public way of any kind, or by an irrigation ditch or drainage ditch, or by some other strip too small for the erection of houses.

History: En. Sec. 2, Ch. 189, L. 1957.

11-513. Validation of prior annexations of government land. Any annexation heretofore made of land with respect to which the United States or the state of Montana, or any agency, instrumentality or political subdivision of either, was at the time of annexation either owner or possessor of a beneficial interest therein, is hereby validated and confirmed.

History: En. Sec. 3, Ch. 189, L. 1957.

CHAPTER 6

PLATS OF CITIES AND TOWNS AND ADDITIONS THERETO

Section 11-601. Plats and surveys to be made and recorded.
11-602. What plat must contain.
11-603. Survey—by whom to be made and what to contain.
11-604. Further requirements as to survey.
11-605. Certificate of surveyor.
11-606. Certificate of dedication and form.
11-607. Abstract of title—release of mortgage or other lien—inclusion of release and judgment in abstract—provision for consent in lieu of release of mortgages or other liens.
11-608. Plat to be prepared in duplicate—approval of same by municipal council or county commissioners—filing and recording.
11-609. Plats must be made on mounted drawing paper, filed and recorded.
11-610. No lots to be sold until plat recorded—penalty.
11-611. Donations or grants on a plat has the effect of a deed.
11-612. New survey and plat may be ordered.
11-613. Form of plat may be prescribed by ordinance.
11-614. Small and irregularly shaped tracts must be platted, surveyed and certified before sale.
11-614.1. Approval of plats before filing—by whom to be done.
11-615. Penalty for violation of law.
11-616. Vacation of recorded plat.

11-601. (4980) **Plats and surveys to be made and recorded.** Any person, company, or corporation, who may lay out any city or town, or any addition to any city or town, or any tract of land within the limits of any

city or town, or townsite, or transfer any lots, blocks, or tracts therein, must cause to be made an accurate survey and plat thereof, and cause the same to be recorded in the office of the county clerk and recorder of the county in which such land lies.

History: En. Sec. 5000, Pol. C. 1895; re-en. Sec. 3465, Rev. C. 1907; amd. Sec. 1, Ch. 119, L. 1917; re-en. Sec. 4980, R. C. M. 1921; amd. Sec. 1, Ch. 64, L. 1933.

References

Farlin v. Hill, 27 M 27, 33, 69 P 237; De Sandro v. Missoula Light & Water Co., 48 M 226, 234, 136 P 711.

Collateral References

Municipal Corporations⇐43; Towns⇐4.
62 C.J.S. Municipal Corporations § 83; 87 C.J.S. Towns § 11.

11-602. (4981) **What plat must contain.** The plat must show as follows:

1. All streets, alleys, avenues, and highways, and the width thereof.

2. All parks, squares, and all other grounds dedicated or reserved for public uses, with the boundaries and dimensions thereof.

3. All lots and blocks with their boundaries, designating such lots and blocks by numbers, and giving the dimensions of every lot and block.

4. The angles of intersection of all boundary lines of the lots and blocks wherever the angle of intersection is not a right angle.

5. The location of all stone or iron monuments set to establish street lines.

6. The exterior boundaries of the piece of land so platted, giving such boundaries by true courses and distances.

7. The location of all section corners or legal subdivision corners of sections within the limits of said plat.

8. The adjoining block corners of all surveyed and adjoining additions, and the streets, alleys, avenues, and highways of such adjoining additions, for the purpose of showing how the new plat and survey conform to such adjoining addition of surveyed and platted ground.

9. For the purpose of promoting the public comfort, welfare, and safety, such plat and survey must show that at least one-ninth of the platted area, exclusive of streets, alleys, avenues, and highways, is forever dedicated to the public for parks and playgrounds; the one-half of such area so dedicated to the public for parks and playgrounds may be distributed in small plots of not less than one block in area through the different parts of the area platted; and the one-half shall be consecrated into larger parks on the outer edge of the area so platted. The board of county commissioners of the county, or the council of the city or town, is hereby authorized to suggest suitable places for such parks and playgrounds, and for good cause shown may make an order in the proceedings of such body (to be endorsed and certified on said plat), diminishing the amount of such area herein required to be dedicated as public parks and playgrounds to not less than one-twelfth thereof, exclusive of streets, alleys, avenues, and highways; provided, that where such platted area consists of a tract of land containing less than twenty acres, such board of county commissioners of the county, or the council of the city or town, may make an order in the proceedings of such body, to be endorsed and certified on said plat, that no park or playground be set aside or dedicated.

History: Ap. p. Sec. 1, p. 39, L. 1883; re-en. Sec. 2031, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 226, L. 1889; amd. Sec. 5001, Pol. C. 1895; re-en. Sec. 3466, Rev. C. 1907; amd. Sec. 2, Ch. 119, L. 1917; re-en. Sec. 4981, R. C. M. 1921.

Constitutionality

The requirement of subsection 9 of this section that a portion of platted subdivisions be dedicated to public park purposes is not an unconstitutional delegation of legislative authority to city and county authorities, nor is the enforcement of these requirements a confiscation of private property without compensation or an invalid extension of the police power. Billings Properties, Inc. v. Yellowstone County, 144 M 25, 394 P 2d 182.

References

Farlin v. Hill, 27 M 27, 33, 69 P 237; Barnard Realty Co. v. City of Butte, 48 M 102, 113, 136 P 1064; State ex rel. Cotter v. District Court, 49 M 146, 152, 140 P 732; Smith v. Town of Hot Springs 125 M 458, 240 P 2d 249.

Collateral References

Municipal Corporations⇨43.
62 C.J.S. Municipal Corporations § 83.

11-603. (4982) **Survey—by whom to be made and what to contain.** A survey of the city or town site or addition must be made by the county surveyor, or some other competent surveyor, who must mark all the corners of the blocks and lots shown on the plat by substantial stakes or monuments, and must set stone or iron monuments at the points of intersection of the center lines of all the streets, where practicable, or as near as possible to such points, and their location must be shown by marking on the plat the distances to the block corners adjacent thereto. The top of such monument must be placed one foot below the surface of the ground, and in size must be six inches by six inches, and be placed in the ground to the depth of one foot.

History: En. Sec. 5002, Pol C. 1895; re-en. Sec. 3467, Rev. C. 1907; re-en. Sec. 4982, R. C. M. 1921.

11-604. (4983) **Further requirements as to survey.** If a stone is used as a monument it must have a cross-cut in the top at the point of intersection of the street lines, or a hole may be drilled in the stone to mark such point. If an iron monument is used, it must be at least two inches in diameter by two and one-half feet in length, and may be either solid iron or pipe. The dimensions of the monuments must be marked on the plat, and establish permanently the lines of all the streets.

History: En. Sec. 5003, Pol. C. 1895; re-en. Sec. 3468, Rev. C. 1907; re-en. Sec. 4983, R. C. M. 1921.

11-605. (4984) **Certificate of surveyor.** The surveyor must make and subscribe in the plat a certificate that such survey was made according to the provisions of this chapter, stating the date of suvey, and verify the same by his oath.

History: En. Sec. 5004, Pol. C. 1895; re-en. Sec. 3469, Rev. C. 1907; re-en. Sec. 4984, R. C. M. 1921.

References

Farlin v. Hill, 27 M 27, 33, 69 P 237.

11-606. (4985) **Certificate of dedication and form.** The owner of the land so platted, or his duly authorized attorney, must make on such plat a certificate, to be known as "The certificate of dedication," which may be in the following form: ....., do hereby certify that ..... have

caused to be surveyed, subdivided, and platted into lots, blocks, streets, and alleys, as shown by the plat and certificate of survey hereunto annexed, the following described tract of land, to wit: (Here describe land included in plat), to be known and designated (here give full name of city, town, or addition), and the lands included in all streets, avenues, alleys, and parks or public squares shown on said plat, are hereby granted and donated to the use of the public forever. Dated this ....., day of ....., A. D. 19.....; which must be signed by all the owners and acknowledged in the same manner as a deed.

History: En. Sec. 5005, Pol. C. 1895; re-en. Sec. 3470, Rev. C. 1907; re-en. Sec. 4985, R. C. M. 1921.

Common-Law Dedication

The filing of city plat before enactment of statutes governing dedication of privately owned lands to the public and providing for the certificate of dedication, constituted a "common-law dedication" of the streets shown thereon, so that the city acquired only easements in such streets. City of Billings v. Pierce Packing Co., 117 M 255, 262, 161 P 2d 636.

Construction of Grant of Irregular Strip Bordering Meandering River

In an action by a county to quiet title to a small strip of land bordering on a river and which was allegedly included in an addition to a town and marked "Riverside Avenue" on the map filed describing the land dedicated for street and alley purposes, which river formed one boundary of the entire platted ground, and by its meandering caused the strip to be wider than other streets, and in places wider than in others, held, that the dedication included the entire strip in dispute, contrary to the contention that the land between a fifteen foot strip and the river was not included in the dedication. Mineral County v. Hyde, 111 M 535, 537, 111 P 2d 284.

Equivalent to a Deed

The fee to the land covered by a street once established is vested in the public; for the form of dedication required of the owner, when the plat of the city or town or an addition thereto is recorded, is equivalent to a deed. Hershfield v. Rocky Mountain Bell Telephone Co., 12 M 102, 115, 29 P 883; Kipp v. Davis-Daly Copper Co., 41 M 509, 516, 110 P 237.

Plat with Certificate Has Force and Effect of Deed

The plat required to be filed in the office of the county recorder by the person laying out an addition to a town, and which, under this section must contain a certificate of dedication of streets, alleys, etc., for public use, has, when accepted and filed, the force and effect of a deed and should be interpreted in favor of the grantee. (Section 67-1518.) Mineral County v. Hyde, 111 M 535, 537, 111 P 2d 284.

Public Park

Where the plat refers to lot 4 as a "public park" and the dedication was in the form prescribed by this section and refers to the plat, but does not include the word "parks" in the dedication, the court is justified in treating lot 4 as a public park and upholding the city council's vacating of the lot as a public park. Smith v. Town of Hot Springs, 125 M 458, 240 P 2d 249.

References

Farlin v. Hill, 27 M 27, 34, 69 P 237; Butte Electric Ry. Co. v. Brett, 80 M 12, 16, 257 P 478.

Collateral References

Municipal Corporations⇨43.
62 C.J.S. Municipal Corporations § 83.

11-607. (4986) **Abstract of title—release of mortgage or other lien—inclusion of release and judgment in abstract—provision for consent in lieu of release of mortgages or other liens.** (1) The owner of the land so surveyed and platted must have prepared and file with said plat an abstract of the title of the land; such abstract of title must be prepared and certified to by an abstractor who has been duly qualified to engage in the business of compiling abstracts of titles to real estate in the state of Montana; such abstract of title must be submitted to the county attorney of the county when said platted land is outside of any city or town, or to the city or town attorney if said platted land is within the boundaries of any city or town, to examine and endorse on said abstract of title his examina-

tion of the same, and that the person making the certificate of dedication is the owner in fee simple of said land so platted.

(2) Persons holding any mortgage or other claim or lien against said land must sign, acknowledge, and record a release in full of any and all claims against the same, which must be shown in the abstract of title as filed; and if the county attorney or city attorney refuses to certify to said title as herein provided, it shall be the duty of the person claiming to own said land in fee simple to begin suit to quiet title and prosecute the same to final judgment. After final judgment is had, he shall include a certified copy of such judgment in said abstract of title, preceding the certificate of said abstracter, and it shall be followed by the certificate of said county or city attorney, as the case may be, and such abstract of title shall, together with the plat, be filed with the proper officer; provided, however, that the owners in fee simple of any lot or lots or tract of land may plat the same as provided by law without securing the release of mortgages, claims, or liens against the same if the persons, firms or corporations holding mortgages or other claims or liens of record consent to the platting of such land by filing with such plat a written consent duly acknowledged. In the platting of such tracts or lots, the lots or tracts as platted shall coincide in area with the description on the recorded deed of each owner at the time of platting so that the description in any mortgage, lien or claim of record can be identified on the plat, and the plat shall contain a metes and bounds description corresponding to the number or other designation of each lot on the plat so that it is apparent from the plat that the lot number or other designation describes the same property.

(3) In the filing and approval of such plats, it shall not be necessary to furnish or deposit a complete abstract of title for examination, but before filing such plats, the same shall be submitted to the county attorney of the county when said platted land is outside of any city or town, or to the city or town attorney if said platted land is within the boundaries of any city or town, together with a certificate from a licensed abstracter showing the names of the owners of said tracts or lots together with an exact description of their property as shown by the deeds of record to said owners and showing the names of any mortgagees or other lien holders or claimants of record against said property so that it may be determined that the owners and the persons holding mortgages or other claims or liens have consented to the filing of said plat as herein provided.

(4) If it is determined that the owners have joined in the plat and that all mortgagees, lien holders or claimants have consented as herein required and that the plat identifies the property of each owner as herein required, then the plat may be filed in the same manner as other plats and in accordance with the provisions of this chapter.

History: En. Sec. 5006, Pol. C. 1895; re-en. Sec. 4986, R. C. M. 1921; re-en. Sec. 3471, Rev. C. 1907; amd. Sec. 3, Ch. 119, L. 1917; amd. Sec. 1, Ch. 20, L. 1943.

11-608. (4987) **Plat to be prepared in duplicate—approval of same by municipal council or county commissioners—filing and recording.** (1) All such plats must be prepared in duplicate, and when the land platted is within the boundaries of an incorporated city or town, such plats must be

submitted to the city or town council for examination and approval or rejection, and when found to conform to law to be approved in duplicate by the council and the city or town engineer, and a certificate of approval shall be endorsed thereon signed by the mayor and the clerk; and a certificate of the city or town engineer shall be endorsed thereon showing that the plat conforms to the adjoining additions or plats of the city or town already platted, as near as the circumstances will admit; and one of such plats so approved and certified shall be filed with the city or town clerk, and one shall be filed with the county clerk and recorder of the county, which shall be the official plat and survey.

(2) When the land platted is outside of the boundaries of a city or town, such plat must be prepared in duplicate and submitted to the board of county commissioners of the county for its examination and approval or rejection, and when found to conform to law to be approved in duplicate by such board of county commissioners and by the county surveyor, and a certificate of approval shall be signed by the chairman of such board and by the county clerk and by the county surveyor, and both plats shall be filed and recorded with the county clerk and recorder. When such townsite is duly included within the boundaries of an incorporated city or town, upon application of such city or town council to such board of county commissioners showing such incorporation, such board shall by an order direct that one of such plats so approved, certified, and filed shall be delivered to the mayor and city clerk, which shall be filed and become the official plat and survey of such city or town.

History: En. Sec. 5007, Pol. C. 1895; 4, Ch. 119, L. 1917; re-en. Sec. 4987, R. re-en. Sec. 3472, Rev. C. 1907; amd. Sec. C. M. 1921.

11-609. (4988) **Plats must be made on mounted drawing paper, filed and recorded.** All such plats must be made on mounted drawing paper, and filed and recorded in the office of the county clerk, and he must keep the original plat for inspection.

History: En. Sec. 5008, Pol. C. 1895; re-en. Sec. 3473, Rev. C. 1907; re-en Sec. 4988, R. C. M. 1921.

11-610. (4989) **No lots to be sold until plat recorded—penalty.** Such plat must be recorded before any lots or blocks are sold or transferred in any manner, and the owner thereof, or any part of the same, must forfeit or pay for each lot sold or transferred, before the recording of such plat, a penalty not less than ten nor more than one hundred dollars, which must be recovered by the county attorney for the use of the county.

History: En. Sec. 5009, Pol. C. 1895; re-en. Sec. 3474, Rev. C. 1907; re-en. Sec. 4989, R. C. M. 1921.

11-611. (4990) **Donations or grants on a plat has the effect of a deed.** Every donation or grant to the public, or to any person, society, or corporation, marked or noted as such on the plat of the city or town, or addition, must be considered, to all intents and purposes, as a deed to the said donee.

History: En. Sec. 5010, Pol. C. 1895; re-en. Sec. 3475, Rev. C. 1907; re-en. Sec. 4990, R. C. M. 1921.

11-612. (4991) **New survey and plat may be ordered.** Whenever the recorded plat of any city or town or addition thereto, does not definitely show the location or size of lots or blocks, or the location or width of any street or alley in such city or town or addition, the council is authorized to cause a new and correct survey and plat of such city or town or addition to be made and recorded in the office of the county clerk, which corrected plat must follow the plan of the original survey and plat, so far as the same can be ascertained and followed, and a certificate of the surveyor making the same must be endorsed thereon, referring to the original plat corrected thereby, and the defect existing therein, and corrected by such new survey and plat. The ordinance authorizing the making of such new plat must be recorded in the office of the county clerk. The surveyor's certificate must show where said ordinance is recorded.

History: En. Sec. 5011, Pol. C. 1895; re-en. Sec. 3476, Rev. C. 1907; re-en. Sec. 4991, R. C. M. 1921.

11-613. (4992) **Form of plat may be prescribed by ordinance.** The council of any city or town has power by ordinance to prescribe the manner and form of making any survey of any plat of lands within the city or town.

History: En. Sec. 5012, Pol. C. 1895; re-en. Sec. 3477, Rev. C. 1907; re-en. Sec. 4992, R. C. M. 1921.

11-614. (4993) **Small and irregularly shaped tracts must be platted, surveyed and certified before sale.** Any person who desires to subdivide and sell or transfer any tract of land in small tracts, such as orchard tracts, vineyard tracts, acreage tracts, suburban tracts, or community tracts, containing less than the United States legal subdivision of ten (10) acres, or who shall subdivide and/or sell or transfer any irregularly shaped tract of land, the acreage of which cannot be determined without a survey, must cause the same to be surveyed, platted, certified, and filed in the office of the county clerk and recorder of the county in which said land lies, according to the provisions of this chapter before any part or portion of the same is sold or transferred; except that it will not be necessary to comply with the provisions of this chapter relating to parks and playgrounds, and such sales or transfers must be made by reference to the plat on file and the numbers of the lots and blocks. It is unlawful for any further sales to be made without a full compliance with the provisions of this chapter, and the surveying and platting of the whole tract, showing the lots sold before the filing of the plat; provided further that until the filing of such plat, or survey, the county clerk of any county shall not record any deed which conveyed, or purports to convey, any irregular shaped tract or part of land or parcel of any such platted tract or tracts of less than the United States legal subdivision of ten (10) acres, unless the person presenting such deed for record also delivers to such county clerk for filing a plat or map which has been prepared by a surveyor or civil engineer, which plat or map shall show with particularity the legal description, and area of the land to be conveyed, except that no map or

plat shall be required in those cases where the parcel of land being conveyed has been previously conveyed by deed or other instrument recorded ten (10) years or more prior to the passage of this act.

History: En. Sec. 5013, Pol. C. 1895; re-en. Sec. 3478, Rev. C. 1907; amd. Sec. 5, Ch. 119, L. 1917; re-en. Sec. 4993, R. C. M. 1921; amd. Sec. 1, Ch. 5, L. 1939; amd. Sec. 1, Ch. 180, L. 1945; amd. Sec. 1, Ch. 227, L. 1947.

Lots of Less Than Ten Acres

The exception to the requirement that specific portions of subdivided property be set aside for public parks and playgrounds applies only to indefinitely described tracts and not to lots surveyed for building purposes. Billings Properties, Inc. v. Yellowstone County, 144 M 25, 394 P 2d 182.

11-614.1. Approval of plats before filing—by whom to be done. The city or town council, if the area lies within or partly within the boundaries of any city or town, or the board of county commissioners, if the area lies wholly outside the boundaries of any city or town, shall inspect all plats prepared under the provisions of section 11-614 and indicate their approval thereon in writing before the county clerk and recorder shall accept said plats for filing. In all cases where the survey plat indicates that the property is being subdivided or platted for building purposes, the city or town council or the board of county commissioners, as the case may be, may require the plat to be prepared in accordance with all the requirements for plats of cities or towns or additions thereto.

History: En. Sec. 1, Ch. 82, L. 1953.

References

Billings Properties, Inc. v. Yellowstone County, 144 M 25, 394 P 2d 182.

Collateral References

Municipal Corporations⇨43.
62 C.J.S. Municipal Corporations § 83.

11-615. (4994) **Penalty for violation of law.** Any person who shall violate any of the provisions of this chapter is guilty of a misdemeanor and punishable by a fine of not less than ten dollars nor more than three hundred dollars.

History: En. Sec. 6, Ch. 119, L. 1917; amd. Sec. 1, Ch. 48, L. 1921; re-en. Sec. 4994, R. C. M. 1921.

11-616. Vacation of recorded plat. Any plat prepared and recorded as herein provided may be vacated, either in whole or in part, as provided by section 11-2803 and 11-2801, Revised Codes of Montana, 1947, and upon such vacation the title to the streets and alleys of such vacated portions, to the center thereof, shall revert to the owners of the property adjacent to such vacated portions, provided that if any pole line, pipeline or other public utility facilities are located in any such vacated street or alley at the time of the reversion of the title thereto, the owner of such public utility facilities shall have an easement over such land to continue the operation and maintenance of such public utility facilities.

History: En. Sec. 1, Ch. 200, L. 1947; amd. Sec. 1, Ch. 152, L. 1961.

Collateral References

Municipal Corporations⇨41-43.
62 C.J.S. Municipal Corporations § 84.

CHAPTER 7

OFFICERS AND ELECTIONS

Section 11-701. Officers of city of the first class.
11-702. Officers of city of second and third classes.
11-703. Officers of towns.
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11-726. Salaries of police judges.
11-727. Compensation of justices of the peace acting as police judge.
11-728. Salary of city treasurer.
11-729. Salary of city attorney.
11-730. Salary of chief of police.
11-731. Salary of city or town clerk.
11-732. Salary must not be increased or diminished during term.
11-733. Constitutional oath of office must be taken.
11-734. Duties and compensation of other officers.

11-701. (4995) **Officers of city of the first class.** The officers of a city of the first class consist of one mayor, two aldermen from each ward, one police judge, one city treaurer, who may be ex officio tax collector, who must be elected by the qualified electors of the city as hereinafter provided. There may also be appointed by the mayor, with the advice and consent of the council, one city attorney, one city clerk, one chief of police, one assessor, one street commissioner, one city jailer, one city surveyor, and whenever a paid fire department is established in such city, a chief engineer and one or more assistant engineers, and any other officers necessary to carry out the provisions of this title. The city council may, by ordinance, prescribe the duties of all city officers and fix their compensation, subject to the limitations contained in this title.

History: En. Sec. 4740, Pol. C. 1895; re-en. Sec. 3216, Rev. C. 1907; re-en. Sec. 4995, R. C. M. 1921.

NOTE.—The reference to "title" in this section refers to a division of the Revised Codes of 1907 which included most of the laws relating to cities and towns.

Appointment of Police

In so far as the method of appointment of members of the police force is concerned, this section is repealed by the provisons of section 11-1816, the method of appointment and removal by the later law is wholly inconsistent with the notion that the mayor and council are authorized to exercise the power of appointment as provided in the older law. State ex rel. Wynne v. Quinn, 40 M 472, 476, 107 P 506.

Chief of Police

The fact that the chief of police is named in the general law, and the rest of the

police officers were left to be brought into existence by the city council, cannot be construed as a declaration by the legislature that his relation to the city and the public must be regarded as different from that of any other member of the police force. State ex rel. Wynne v. Quinn, 40 M 472, 476, 107 P 506.

Execution of Power Granted

The grant of power contained in this section, in the matter of prescribing the duties and fixing the compensation of city officers, is subject not only to the express and implied limitations found elsewhere in the title under which the section falls, but contains in itself a limitation as to the mode in which the power granted may be executed. McGillic v. Corby, 37 M 249, 254, 95 P 1063.

References

City of Philipsburg v. Degenhart, 30 M 299, 304, 76 P 694; State ex rel. Quintin v. Edwards, 38 M 250, 267, 99 P 940; State ex rel. Klick v. Wittmer, 50 M 22, 25, 144 P 648; State ex rel. Ryan v. Norby, 118 M 283, 165 P 2d 302, 303.

Collateral References

Municipal Corporations⇐123.

62 C.J.S. Municipal Corporations § 462.

37 Am. Jur. 854, Municipal Corporations, § 222 et seq.

Incompatibility of offices or positions in the military, and in the civil, service. 26 ALR 142; 132 ALR 254; 147 ALR 1419; 148 ALR 1399 and 150 ALR 1444.

Personal liability of municipal officer or employee for negligence in performance of duty. 40 ALR 1358 and 53 ALR 381.

Availability of writ of prohibition as means of controlling administrative or executive boards or officers. 115 ALR 3 and 159 ALR 627.

Power of courts or judges in respect of removal of officers. 118 ALR 170.

11-702. (4996) **Officers of city of second and third classes.** The officers of a city of the second and third classes consist of one mayor, two aldermen from each ward, one police judge, one city treasurer, who may be ex officio tax collector, who must be elected by the qualified electors of the city as hereinafter provided. There may also be appointed by the mayor, with the advice and consent of the council, one city clerk, who is ex officio city assessor, one chief of police, one city attorney, and any other officer necessary to carry out the provisions of this title. The city council may prescribe the duties of all city officers, and fix their compensation, subject to the limitations contained in this title.

History: En. Sec. 4741, Pol. C. 1895; re-en. Sec. 3217, Rev. C. 1907; re-en. Sec. 4996, R. C. M. 1921.

NOTE.—The "title" referred to in this section embraced the entire municipal law contained in the Revised Codes of 1907.

Commissioner of Public Works

Commissioner of public works, appointed by the mayor, being a public officer of the city, was under a duty to account for all funds which might come into his hands as such officer, including funds of public housing projects. City of Roundup v. Liebetrau, 134 M 114, 327 P 2d 810, 816.

References

Grush v. Bishop, 46 M 97, 99, 102, 126 P 619; State ex rel. Klick v. Wittmer, 50 M 22, 25, 144 P 648; State ex rel. Sandquist v. Rogers, 93 M 355, 361, 18 P 2d 617; Lillis v. City of Big Timber, 103 M 206, 211, 62 P 2d 219; State ex rel. Ryan v. Norby, 118 M 283, 165 P 2d 302, 303.

Collateral References

Municipal Corporations⇐123.

62 C.J.S. Municipal Corporations § 462.

37 Am. Jur. 854, Municipal Corporations, § 222 et seq.

11-703. (4997) **Officers of towns.** The officers of a town consist of one mayor and two aldermen from each ward, who must be elected by the qualified electors of the town as hereinafter provided. There may be appointed by the mayor, with the advice and consent of the council, one clerk, who may be ex officio assessor and a member of the council, and one treasurer, who may be ex officio tax collector, and one marshal, who may be ex officio street commissioner, and any other officers necessary to carry out the provisions of this title. The town council may prescribe the duties

of all town officers, and fix their compensation, subject to the limitations contained in this title.

History: En. Sec. 4742, Pol. C. 1895; re-en. Sec. 3218, Rev. C. 1907; re-en. Sec. 4997, R. C. M. 1921.

References

State ex rel. Ryan v. Board of Aldermen, 45 M 188, 192, 122 P 569; Grush v. Bishop, 46 M 97, 99, 126 P 619; State ex rel. Klick v. Wittmer, 50 M 22, 25, 144 P 648.

11-704. (4998) **Repealed—Chapter 260, Laws of 1967.**

Repeal

This section (Sec. 4743, Pol. C. 1895; Sec. 1, Ch. 114, L. 1915), relating to the appointment and duties of public library trustees, was repealed by Sec. 12, Ch. 260, Laws 1967.

11-705. (4999) **Council has power to abolish office.** The city or town council has the power to abolish any office, the appointment to which is made by the mayor, with the advice and consent of the council, and discharge any officer so appointed, by a majority vote of the council; but no office created under this title must be abolished by the council.

History: En. Sec. 4744, Pol. C. 1895; re-en. Sec. 3220, Rev. C. 1907; re-en. Sec. 4999, R. C. M. 1921.

Application of Section

This section has no application to a fireman, since section 11-1902 declares that he is not to be deemed a municipal officer. State ex rel. Driffill v. City of Anaconda, 41 M 577, 581, 111 P 345.

Offices Subject to Abolishment

The only officers of a city of the first class actually created by the legislature are the mayor, two aldermen from each ward, a police judge, and a city treasurer, none of whom can be in any way affected by any action of the council, though other offices may be abolished. State ex rel. Quintin v. Edwards, 38 M 250, 269, 99 P 940.

The city council may, by a bare majority vote, abolish the office of city purchasing agent at any time and discharge the person appointed to fill it; hence, if the incumbent of it be an alderman, the two offices are incompatible, and one individual cannot fill both at the same time. State ex rel. Klick v. Wittmer, 50 M 22, 25, 144 P 648.

References

State ex rel. Quintin v. Edwards, 40 M 287, 310, 106 P 695; State ex rel. Sandquist v. Rogers, 93 M 355, 361, 18 P 2d 617.

11-706. (5000) **Power to consolidate offices.** The city or town council may, by ordinance, consolidate any of the offices, the appointment to which is made by the mayor, with the advice and consent of the council, and may require any of the elected officers to perform any of the duties of an appointed officer whose office has been abolished.

History: En. Sec. 4745, Pol. C. 1895; re-en. Sec. 3221, Rev. C. 1907; re-en. Sec. 5000, R. C. M. 1921.

11-707. (5001) **City or town to be divided into wards.** The first city or town council elected under the provisions of this title must divide the city or town into wards for election and other purposes, having regard to population so as to make them as nearly equal as possible.

History: En. Sec. 4746, Pol. C. 1895; re-en. Sec. 3222, Rev. C. 1907; re-en. Sec. 5001, R. C. M. 1921.

Collateral References

Municipal Corporations⇐40.

11-708. (5002) **Division of cities and towns into wards.** Cities of the first class must be divided into not less than four nor more than ten wards;

cities of the second class into not less than three nor more than six wards; and cities of the third class into not less than two nor more than four wards; and towns into not less than two nor more than three wards. Provided, however, that the town council may by ordinance reduce the number of wards in a town to only one if it so desires. All changes in the number and boundaries of wards must be made by ordinance, and no new ward must be created unless there shall be within its boundaries one hundred and fifty electors, or more.

History: En. Sec. 4747, Pol. C. 1895; re-en. Sec. 3223, Rev. C. 1907; amd. Sec. 1, Ch. 74, L. 1909; re-en. Sec. 5002, R. C. M. 1921; amd. Sec. 1, Ch. 39, L. 1943.

11-709. (5003) **Biennial elections in cities and towns—terms of office.** On the first Monday of April of every second year a municipal election must be held, at which the qualified electors of each town or city must elect a mayor and two aldermen from each ward, to be voted for by the wards they respectively represent; the mayor to hold office for a term of two (2) years, and until the qualification of his successor; and each alderman so elected to hold office for a term of two (2) years, and until the qualification of his successor; and also in cities of the first, second and third class, a police judge and a city treasurer, who shall hold office for a term of two (2) years, and until the qualification of their successors; provided, however, that in all cities and towns when the term of office of the incumbent mayor, alderman, police judge or city treasurer will not expire until the first Monday in May, 1936, a special election must be held on the first Monday in April, 1936, at which election a successor to such mayor, alderman, police judge or city treasurer shall be elected for a term of one (1) year, and thereafter no election shall be held for the election of city officers, except every second year.

History: Ap. p. Sec. 4 p. 122, L. 1893; amd. Sec. 4748, Pol. C. 1895; re-en. Sec. 3224, Rev. C. 1907; re-en. Sec. 5003, R. C. M. 1921; amd. Sec. 1, Ch. 60, L. 1935.

Collateral References

Municipal Corporations⇐129.
62 C.J.S. Municipal Corporations § 471.

11-710. (5004) **Qualification of mayor.** No person shall be eligible to the office of mayor unless he shall be at least twenty-five (25) years old and a taxpaying freeholder within the limits of the city or town, and a resident of the state for at least three years, and a resident of the city or town or an area which has been annexed by the city or town for which he may be elected mayor two years next preceding his election to said office, and shall reside in the city or town for which he shall be elected mayor during his term of office.

History: En. Sec. 8, p. 65, Ex. L. 1887; amd. Sec. 4749, Pol. C. 1895; re-en. Sec. 3225, Rev. C. 1907; re-en. Sec. 5004, R. C. M. 1921; amd. Sec. 1, Ch. 76, L. 1961.

Taxpaying Freeholder

Under this section, requiring the mayor of a city to be a "taxpaying freeholder," a person who, at the time of his election, owned and paid taxes on personalty, and owned realty on which he was not liable for taxes for that year because acquired since the date of assessment, is eligible to the office. Mayer v. Sweeney, 22 M 103, 105, 55 P 913.

References

Brown v. Foster, 48 M 114, 117, 135 P 993.

Collateral References

Municipal Corporations⇐138.
62 C.J.S. Municipal Corporations § 476.

11-711. (5005) **Terms of alderman—how decided.** At the first annual election held after the organization of a city or town under this title, the electors of such city or town must elect two aldermen from each ward, who must, at the first meeting of the council, decide by lot their terms of office, one from each ward to hold for a term of two years, and one for the term of one year, and until the qualification of their successors.

History: En. Sec. 4750, Pol. C. 1895; re-en. Sec. 3226, Rev. C. 1907; re-en. Sec. 5005, R. C. M. 1921.

Collateral References

Municipal Corporations⇐149 (2).

62 C.J.S. Municipal Corporations §§ 495-497.

11-712. (5006) **Terms of office—when to begin.** The terms of all officers elected at a municipal election are to commence on the first Monday in May after such election.

History: En. Sec. 4751, Pol. C. 1895; re-en. Sec. 3227, Rev. C. 1907; re-en. Sec. 5006, R. C. M. 1921.

11-713. (5007) **Who eligible.** No person is eligible to any municipal office, elective or appointive, who is not a citizen of the United States, and who has not resided in the town or city or an area which has been annexed by such town or city for at least two years immediately preceding his election or appointment, and is not a qualified elector thereof.

History: En. Sec. 365, 5th Div. Comp. Stat. 1887; amd. Sec. 4752, Pol. C. 1895; re-en. Sec. 3228, Rev. C. 1907; re-en. Sec. 5007, R. C. M. 1921; amd. Sec. 2, Ch. 76, L. 1961.

Application of Section

This section is of general application, and controls aldermanic candidates who aspire to office at a first election after incorporation, as well as to those who seek like honors at subsequent elections. Brown v. Foster, 48 M 114, 119, 135 P 993.

Construction of Section

The phrase "preceding the election," as used in this section, is equivalent in meaning to the expression "next preceding the election." Dowty v. Pittwood, 23 M 113, 118, 57 P 727.

Legislature Prescribing no Qualifications

Where the legislature in creating an elective office prescribes no limitations or qualifications, the right to hold it is an implied attribute of citizenship and is presumed to be co-extensive with that of voting at an election held for the purpose of choosing an incumbent for that office, those only who are competent to select the officer being deemed competent to hold it. State ex rel. Shea v. Cocking, 66 M 169, 172, 213 P 594.

Police Judge

The office of the police judge is the creation of the statute and not of the constitution. State ex rel. Shea v. Cocking, 66 M 169, 172, 213 P 594.

Blindness did not disqualify one from holding the office of police judge. State ex rel. Shea v. Cocking, 66 M 169, 172, 213 P 594.

References

Lillis v. City of Big Timber, 103 M 206, 211, 62 P 2d 219.

Collateral References

Municipal Corporations⇐138.

62 C.J.S. Municipal Corporations §§ 477, 479.

11-714. (5008) **Qualification of aldermen.** No person shall be eligible to the office of alderman unless he shall be a taxpaying freeholder within the limits of a city, and a resident of the ward so electing him, or a resident of an area which has been annexed by the city or town and placed in a ward, for at least sixty (60) days preceding such election.

History: En. Sec. 366, 5th Div. Comp. Stat. 1887; amd. Sec. 4753, Pol. C. 1895; re-en. Sec. 3229, Rev. C. 1907; re-en. Sec. 5008, R. C. M. 1921; amd. Sec. 3, Ch. 76, L. 1961; amd. Sec. 1, Ch. 144, L. 1967.

Residence

The provision of this section, prior to 1967 amendment, requiring that any person, to be eligible to the office of alderman, must have been a resident of the ward where elected "for at least one year preceding the election," meant one year next preceding the election. Dowty v. Pittwood, 23 M 113, 117, 57 P 727.

References

Brown v. Foster, 48 M 114, 117, 135 P 993.

11-715. (5009) **Registration of electors.** The council must provide by ordinance for the registration of electors in any city or town, and may prohibit any person from voting at any election unless he has been registered; but such ordinance must not be in conflict with the general law providing for the registration of electors, and must not change the qualifications of electors except as in this title provided. However, when an area is annexed by a city or town after the date for registration has expired, opportunity must be provided for residents of such area to register, if otherwise qualified, for all future elections.

History: En. Sec. 4754, Pol. C. 1895; re-en. Sec. 3230, Rev. C. 1907; re-en. Sec. 5009, R. C. M. 1921; amd. Sec. 4, Ch. 76, L. 1961.

Collateral References

Elections⇐96, 97.

29 C.J.S. Elections §§ 36, 38.

25 Am. Jur. 2d 784, Elections, § 96 et seq.

Nonregistration as affecting legality of votes cast by persons otherwise qualified. 101 ALR 657.

DECISIONS UNDER FORMER LAW

Elections on Creating or Increasing Indebtedness

This section and sections 5278 and 5279, R. C. M. 1935 (since repealed) relating to registration and qualifications of electors in special elections on proposals to create or increase city indebtedness, were impliedly repealed by section 84-4711 and 5199.2 R. C. M. 1935 (since repealed) to the extent the chapter conflicts with said sections, except as to the matter of giving notice of such elections, in which respect said section 5279, was still controlling. Weber v. City of Helena, 89 M 109, 115, 297 P 455.

On original application for writ of injunction, it was held that the provisions of section 84-4711 and 5199.2 R. C. M. 1935 (since repealed) and not this section and sections 5278 and 5279, R. C. M. 1935 (since repealed) govern the procedure to be followed for the registration of electors and their qualifications in a special city election called for the purpose of submitting to them the question of the issuance of city water plant bonds. Weber v. City of Helena, 89 M 109, 115, 297 P 455, distinguished in 111 M 417, 432, 109 P 2d 1094.

11-716. (5010) **Qualifications of electors.** All qualified electors of the state who have resided in the city or town or an area which has been annexed by such city or town for six months and in the ward or an area which has been annexed and placed in a ward for thirty days next preceding the election are entitled to vote at any municipal election, including elections involving or held under the commmission form of government, commission-manager plan or other form of municipal government.

History: En. Sec. 4755, Pol. C. 1895; re-en. Sec. 3231, Rev. C. 1907; re-en. Sec. 5010, R. C. M. 1921; amd. Sec. 5, Ch. 76, L. 1961.

Presumption of Right To Vote

The presumption of a right to vote arises from the fact of registration, but slight proof of the lack of any necessary qualifications to vote is sufficient to overcome that presumption, and calls for evidence in affirmation of the voter's qualifications from the party who would benefit from the vote. Sommers v. Gould, 53 M 538, 165 P 599.

Residence of Voter

The residence of a voter is to be determined from his acts and intent; but this fact, like any other fact involved in a civil action or proceeding, may be established by circumstantial evidence, and any declaration of the voter touching the subject, if a part of the res gestae, or any declarations in disparagement of his right to vote, if made at or before the election, may be re-

ceived in evidence. Sommers v. Gould, 53 M 538, 165 P 599.

References

Dowty v. Pittwood, 23 M 113, 118, 57 P 727; State ex rel. Shea v. Cocking, 66 M 169, 173, 213 P 594.

Collateral References

Elections⇨72.
29 C.J.S. Elections § 20.
25 Am. Jur. 2d 751, Elections, § 58 et seq.; 38 Am. Jur. 412, Municipal Corporations, §§ 709, 710.

Voting by persons in the military service. 149 ALR 1466; 150 ALR 1460; 151 ALR 1464; 152 ALR 1459; 153 ALR 1434; 154 ALR 1459 and 155 ALR 1459.

Domicil or residence of person in the armed forces. 149 ALR 1471; 150 ALR 1468; 151 ALR 1468; 152 ALR 1471; 153 ALR 1442; 155 ALR 1466; 156 ALR 1465; 157 ALR 1462 and 158 ALR 1474.

11-717. (5011) **Election judges and clerks—voting places.** The council or other governing body must appoint judges and clerks of election, and places of voting. Where the city or town is divided into wards there must be at least one (1) voting place in each ward and there may be as many more as the council or other governing body shall fix, and the elector must vote in the ward in which he resides. In cities and towns divided into wards the election precincts must correspond with the wards, but a ward may be subdivided into several voting precincts, and when so divided the elector shall vote in the precinct in which he resides. In cities and towns operating under the commission, or the commission-manager plan of municipal government, where there are no wards for election purposes and the officers of the city or town are elected at large, the election precincts shall correspond with the election precincts in such city or town as fixed by the board of county commissioners for state and county elections, but such precincts may be by the city commission divided into as many voting precincts, to facilitate the voting and counting of the vote, as the city commission shall by ordinance provide, and the elector shall vote in the voting precinct so designated, in which he resides. For all municipal elections the city council or other governing body may appoint a second or additional board of election judges for any voting precinct in which there were cast three hundred and fifty (350) or more votes in the last general city election or in which council or other governing body believes as many as three hundred and fifty (350) ballots will be cast in the next general city election, and such additional board of election judges shall have the same powers and duties, and under the same conditions, as the second or additional board of election judges for general elections appointed by boards of county commissioners under the provisions of section 23-601. Provided that in municipal corporations of less than one thousand five hundred (1,500) population, as determined by the last official census, the council or other governing body may by ordinance provide that there shall be but one polling or voting place for municipal elections, notwithstanding the number of wards or precincts in the municipality otherwise provided for. All municipal elections must be conducted in accordance with the general laws of the state of Montana relating to such election.

History: En. Sec. 1, Ch. 187, L. 1907; Sec. 3232, Rev. C. 1907; amd. Sec. 1, Ch. 59, L. 1909; re-en. Sec. 5011, R. C. M. 1921; amd. Sec. 1, Ch. 19, L. 1939; amd. Sec. 1, Ch. 86, L. 1941; amd. Sec. 1, Ch. 124, L. 1947; amd. Sec. 1, Ch. 14, L. 1955.

Collateral References

Elections⇨47, 201.
29 C.J.S. Elections §§ 55, 193.

11-718. (5012) **Canvass—when and how made.** On the Monday following any election, the council must convene and publicly canvass the result, and issue certificates of election to each person elected by a plurality of votes. When two or more persons have received an equal and highest number of votes for any one of the offices voted for, the council must thereafter, at its first regular meeting, decide by vote between the parties which is elected. If the council from any cause fails to meet on the day named, the mayor must call a special meeting of the council within five days thereafter, and, in addition to the notice provided for calling special meetings, must publish the same on two successive days in some newspaper published in such city or town. If the mayor fails to call said meeting within said five days, any three councilmen may call it. At such special meeting all elections, appointments, or other business may be transacted that could have been on the day first herein named.

History: En. Sec. 4757, Pol. C. 1895; re-en. Sec. 3233, Rev. C. 1907; re-en. Sec. 5012, R. C. M. 1921.

Collateral References

Elections⇐238, 257, 265.
29 C.J.S. Elections §§ 235, 240, 244.

11-719. (5013) **Oath and bonds—vacancy.** Each officer of a city or town must take the oath of office, and such as may be required to give bonds, file the same, duly approved, within ten days after receiving notice of his election or appointment; or, if no notice be received, then on or before the date fixed for the assumption by him of the duties of the office to which he may have been elected or appointed, but if any one, either elected or appointed to office, fails for ten days to qualify as required by law, or enter upon his duties at the time fixed by law, then such office becomes vacant; or if any officer absents himself from the city or town continuously for ten days without the consent of the council, or openly neglects or refuses to discharge his duties, such office may be by the council declared vacant; or if any officer removes from the city or town, or any alderman from his ward, such office must be by the council declared vacant.

History: En. Sec. 4758, Pol. C. 1895; re-en. Sec. 3234, Rev. C. 1907; re-en. Sec. 5013, R. C. M. 1921.

References

City of Philipsburg v. Degenhart, 30 M 299, 303, 76 P 694; Lillis v. City of Big Timber, 103 M 206, 211, 62 P 2d 219.

Failure To Take Official Oath

The failure of the person elected or appointed to a city office to qualify within ten days, by taking the official oath, creates a vacancy under this section, which may be filled by the appointing power. State ex rel. Bennetts v. Duncan, 47 M 447, 453, 133 P 109.

Collateral References

Municipal Corporations⇐144, 145.
62 C.J.S. Municipal Corporations §§ 490, 491.

11-720. (5014) **When duties of office begin.** The officers elected enter upon their duties the first Monday of May succeeding their election, and officers appointed by the mayor, with the advice and consent of the council, within ten days after receiving notice of their appointment.

History: En. Sec. 4759, Pol. C. 1895; re-en. Sec. 3235, Rev. C. 1907; re-en. Sec. 5014, R. C. M. 1921.

Collateral References

Municipal Corporations⇐149 (2).
62 C.J.S. Municipal Corporations § 496.

11-721. (5015) **Vacancies—how filled—removal of officer.** When any vacancy occurs in any elective office, the council, by a majority vote of the members, may fill the same for the unexpired term, and until the qualification of the successor. A vacancy in the office of alderman must be filled from the ward in which the vacancy exists, but if the council shall fail to fill such vacancy before the time for the next election, the qualified electors of such city or ward may nominate and elect a successor to such office. The council, upon written charges, to be entered upon their journal, after notice to the party and after trial by the council, by vote of two-thirds of all the members elect, may remove any officer.

History: En. Sec. 1, Ch. 72, L. 1903; re-en. Sec. 3236, Rev. C. 1907; re-en. Sec. 5015, R. C. M. 1921.

Application of Section

The provision of this section, requiring "a majority vote of the members" of the city council, that is, a majority of those constituting the actual membership of the body at the time, to fill a vacancy in an elective city office, and not section 11-1014, making "a majority of the whole number of the members elected" requisite for such purpose, is applicable in case a vacancy in its own body caused by resignation or death is to be filled. State ex rel. Wilson v. Willis, 47 M 548, 552, 133 P 962, distinguished in 92 M 307, 311, 14 P 2d 432. See State ex rel. Klick v. Wittmer, 50 M 22, 26, 144 P 648.

Construction of Section

This section is in consonance with section 18, article V of the state constitution, subjecting officers not liable to impeachment to removal in the manner provided by law, and is a proper exercise of the legislative authority therein granted. State ex rel. Working v. Mayor, 43 M 61, 63, 114 P 777.

Filling Vacancy—Right To Vote

Having been rightfully chosen by the city council to fill a vacancy in its own body, and after taking and subscribing the constitutional oath, an alderman had the right to have his vote on the question of filling another vacancy, caused by death, recorded, even though a certificate of election had not been issued to him, and irrespective of the mayor's refusal to recognize him, or of the fact than an action to determine his official status was then pending. State ex rel. Wilson v. Willis, 47 M 548, 553, 133 P 962.

Misconduct of Alderman

An alderman was properly found guilty of misconduct in office and removed, on the grounds that in his capacity as an attorney at law he defended one charged with conducting business without paying a license tax, and accepted a retainer to prosecute a suit against the town for damages and an injunction in regard to a sewer. State ex rel. Ryan v. Board of Aldermen, 45 M 188, 193, 122 P 569.

Police Judge

The office of police judge is a creature not of the constitution, but of the statute, and the incumbent thereof is not liable to impeachment. He is, however, a city officer, and may therefore, in a proper case, be removed by the city council. State ex rel. Working v. Mayor, 43 M 61, 63, 114 P 777.

Prohibition does not lie at the suit of a police judge of a city to prohibit the city council from proceeding to remove him from office, where written charges have not been filed against him as required by this section. State ex rel. Working v. Mayor, 43 M 61, 66, 114 P 777.

Removal for Misconduct

To justify removal of an officer for misconduct, it is not necessary that the actions made the basis of the charge against him must have been willful; the official doing of an act may constitute misconduct, although there was no corrupt or malicious motive. Leggatt v. Prideaux, 16 M 205, 207, 40 P 377; State ex rel. Wynne v. Examining and Trial Board, 43 M 389, 399, 117 P 77; State ex rel. Rowe v. District Court, 44 M 318, 324, 119 P 1103; State ex rel. Ryan v. Board of Aldermen, 45 M 188, 195, 122 P 569; Bailey v. Examining and Trial Board, 45 M 197, 201, 122 P 572.

Written Charges Required for Removal

Until written charges have been filed with a city council, in conformity with the provision of this section, no proceeding looking to the removal of a city officer has been instituted. State ex rel. Working v. Mayor, 43 M 61, 63, 114 P 777.

References

State v. District Court, 61 M 558, 566, 202 P 756; State ex rel. O'Hern v. Loud, 92 M 307, 311, 14 P 2d 432.

Collateral References

Municipal Corporations⇐155.

62 C.J.S. Municipal Corporations § 506.

11-722, 11-723. (5016, 5017) **Repealed—Chapter 67, Laws of 1967.**

Repeal

These sections (Secs. 4761, 4762, Pol. C. 1895), relating to the giving of official bonds by public officers, were repealed by Sec. 11, Ch. 67, Laws 1967. For present law, see secs. 6-601 to 6-608.

11-724. (5018) **Salaries must be fixed.** The council must, by ordinance, fix the salaries and compensation of the city officers, policemen, and other employees, which must not exceed the amount specified in this code.

History: En. Sec. 4763, Pol. C. 1895; re-en. Sec. 3239, Rev. C. 1907; re-en. Sec. 5018, R. C. M. 1921.

Collateral References

Municipal Corporations⇨60.
62 C.J.S. Municipal Corporations § 153.

11-725. (5019) **Salaries and qualifications of mayor and alderman.** The annual salary of a mayor must be fixed by ordinance, and in a city of the first class must not exceed ten thousand dollars ($10,000); and the annual salary of the mayor of a city of the second class must not exceed four thousand five hundred dollars ($4,500); and the annual salary of the mayor of a city of the third class must not exceed three thousand six hundred dollars ($3,600).

The salary of aldermen must be fixed by ordinance, and each alderman in a city of the first class may be allowed and paid a salary not exceeding one hundred fifty dollars ($150) per month; and aldermen of cities of the second and third class may be allowed and paid a salary not exceeding seventy-five dollars ($75) per month. No person shall be elected to the office of mayor or alderman in any city or town who is not a resident and freeholder within the limits of the city or town.

History: En. Sec. 4764, Pol. C. 1895; re-en. Sec. 3240, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1913; re-en. Sec. 5019, R. C. M. 1921; amd. Sec. 1, Ch. 50, L. 1943; amd. Sec. 1, Ch. 188, L. 1949; amd. Sec. 1, Ch. 115, L. 1951; amd. Sec. 1, Ch. 76, L. 1953; amd. Sec. 1, Ch. 170, L. 1955; amd. Sec. 1, Ch. 179, L. 1961; amd. Sec. 1, Ch. 142, L. 1963; amd. Sec. 1, Ch. 158, L. 1965; amd. Sec. 1, Ch. 224, L. 1967.

Collateral References

Municipal Corporations⇨162 (1), (7).
62 C.J.S. Municipal Corporations § 536.

11-726. (5020) **Salaries of police judges.** The annual salary and compensation of police judges must be fixed by ordinance.

History: En. Sec. 4765, Pol. C. 1895; re-en. Sec. 3241, Rev. C. 1907; amd. Sec. 1, Ch. 61, L. 1919; re-en. Sec. 5020, R. C. M. 1921; amd. Sec. 2, Ch. 76, L. 1953; amd. Sec. 2, Ch. 179, L. 1961; amd. Sec. 2, Ch. 158, L. 1965; amd. Sec. 1, Ch. 186, L. 1967.

Collection of Fees

Under this section, prior to its amendment in 1953, a police judge was not entitled to collect fees in cases arising out of violations of city ordinances, either from the city or from the defendant. State ex rel. Rowe v. District Court, 45 M 205, 209, 122 P 270.

References

State ex rel. Rowe v. District Court, 44 M 318, 322, 119 P 1103.

Collateral References

Judges⇨22 (1).
48 C.J.S. Judges §§ 34, 35, 37.

11-727. (5021) **Compensation of justices of the peace acting as police judge.** In towns, the council may designate a justice of the peace of the township in which the town is situated to act as police judge, and may by ordinance fix his compensation for his services, not exceeding one hundred dollars per annum, and the justices of the peace so designated must act

as a police judge in all cases arising out of a violation of ordinances where the town is a party.

History: En. Sec. 4766, Pol. C. 1895; re-en. Sec. 3242, Rev. C. 1907; re-en. Sec. 5021, R. C. M. 1921.

Jurisdiction

A justice of the peace, acting as police judge, has exclusive jurisdiction in all cases arising under the ordinances, in addition to his jurisdiction as a justice. The two jurisdictions are separate and distinct, however, because he can act as police judge only by virtue of his designation under the statute and by the mode of procedure provided for that purpose. State ex rel. Streit v. Justice Court, 45 M 375, 380, 123 P 405.

A justice of the peace has no jurisdiction over cases arising under town ordinances, except where he may have been designated under this section to act as police judge, in which event failure to style himself "police judge," instead of "justice of the peace," is a mere irregularity, insufficient to divest him of jurisdiction. Grant v. Williams, 54 M 246, 252, 169 P 286.

Malicious Prosecution

In an action for malicious prosecution against a justice of the peace, by a person aggrieved by an act of such justice acting in the designated capacity of police judge, it must be alleged that such officer had not been designated to act as police judge; otherwise the presumption will prevail that official duty was regularly performed. Grant v. Williams, 54 M 246, 252, 169 P 286.

Collateral References

Justices of the Peace⇐15, 20.
51 C.J.S. Justices of the Peace § 15.

11-728. (5022) **Salary of city treasurer.** The annual salary and compensation of the treasurer must be fixed by ordinance, and must be for all services rendered by such treasurer in any capacity.

History: En. Sec. 4767, Pol. C. 1895; re-en. Sec. 3243, Rev. C. 1907; re-en. Sec. 5022, R. C. M. 1921; amd. Sec. 1, Ch. 69, L. 1939; amd. Sec. 1, Ch. 46, L. 1947; amd. Sec. 3, Ch. 76, L. 1953; amd. Sec. 2, Ch. 170, L. 1955; amd. Sec. 3, Ch. 179, L. 1961; amd. Sec. 2, Ch. 142, L. 1963; amd. Sec. 3, Ch. 158, L. 1965; amd. Sec. 1, Ch. 189, L. 1967.

11-729. (5023) **Salary of city attorney.** The annual salary and compensation of the city attorney must be fixed by ordinance.

History: En. Sec. 4768, Pol. C. 1895; re-en. Sec. 3244, Rev. C. 1907; re-en. Sec. 5023, R. C. M. 1921; amd. Sec. 1, Ch. 25, L. 1943; amd. Sec. 2, Ch. 188, L. 1949; amd. Sec. 2, Ch. 115, L. 1951; amd. Sec. 4, Ch. 76, L. 1953; amd. Sec. 3, Ch. 170, L. 1955; amd. Sec. 4, Ch. 179, L. 1961; amd. Sec. 4, Ch. 158, L. 1965; amd. Sec. 1, Ch. 155, L. 1967.

11-730. (5024) **Salary of chief of police.** That from and after July 1, 1957 the annual salary and compensation of the chief of police shall be not less than, in cities of the second class, four hundred twenty-five dollars ($425.00) per month for the first year of service, and thereafter, of at least four hundred twenty-five dollars ($425.00) per month, plus one per cent (1%) of said minimum base monthly salary for each additional year of service up to and including the twentieth year of such additional service; and, in cities of the third class the salary and compensation of the chief of police shall be not less than three hundred twenty-five dollars ($325.00) per month for the first year of service, and thereafter, of at least three hundred twenty-five dollars ($325.00) per month, plus one per cent (1%) of said minimum base monthly salary for each additional year of service up to and including the twentieth year of such additional service. Subject to such minimum salary of the chief of police in cities of the second and third class, the salary of the chief of police may be in-

creased from time to time by the mayor, subject to the consent and approval of the council.

History: En. Sec. 4769, Pol. C. 1895; re-en. Sec. 3245, Rev. C. 1907; amd. Sec. 1, Ch. 55, L. 1911; re-en. Sec. 5024, R. C. M. 1921; amd. Sec. 1, Ch. 51, L. 1943; amd. Sec. 1, Ch. 234, L. 1947; amd. Sec. 1, Ch. 10, L. 1951; amd. Sec. 1, Ch. 30, L. 1957.

Cross-Reference

Salary of chief of police in cities of the first class, sec. 11-1815.

Collateral References

Municipal Corporations⇨176 (5), 182.
62 C.J.S. Municipal Corporations § 565.

11-731. (5025) **Salary of city or town clerk.** The annual salary and compensation of the city or town clerk must be fixed by ordinance.

History: En. Sec. 4770, Pol. C. 1895; re-en. Sec. 3246, Rev. C. 1907; amd. Sec. 1, Ch. 14, L. 1917; re-en. Sec. 5025, R. C. M. 1921; amd. Sec. 1, Ch. 124, L. 1945; amd. Sec. 3, Ch. 188, L. 1949; amd. Sec. 3, Ch. 115, L. 1951; amd. Sec. 5, Ch. 76, L. 1953; amd. Sec. 4, Ch. 170, L. 1955; amd. Sec. 5, Ch. 179, L. 1961; amd. Sec. 5, Ch. 158, L. 1965; amd. Sec. 1, Ch. 156, L. 1967.

Collateral References

Towns⇨29.
87 C.J.S. Towns § 71.

11-732. (5026) **Salary must not be increased or diminished during term.** The salary and compensation of an officer must not be increased or diminished during his term of office.

History: En. Sec. 4771, Pol. C. 1895; re-en. Sec. 3247, Rev. C. 1907; re-en. Sec. 5026, R. C. M. 1921.

References

Broadwater v. Kendig, 80 M 515, 520, 261 P 264.

Collateral References

Municipal Corporations⇨164.
62 C.J.S. Municipal Corporations § 537.

11-733. (5027) **Constitutional oath of office must be taken.** Before entering upon office all officers, elected or appointed, must take and subscribe the constitutional oath of office.

History: En. Sec. 4772, Pol. C. 1895; re-en. Sec. 3248, Rev. C. 1907; re-en. Sec. 5027, R. C. M. 1921.

Alderman

The official oath in writing of an alderman, when taken and subscribed, is intended to become a record of the city. State ex rel. Wilson v. Willis, 47 M 548, 554, 133 P 962.

References

State ex rel. Bennetts v. Duncan, 47 M 447, 453, 133 P 109.

Collateral References

Municipal Corporations⇨144.
62 C.J.S. Municipal Corporations § 490.

11-734. (5028) **Duties and compensation of other officers.** The duties and compensation of the street commissioners, chief of the fire department, city surveyor, and other city officers not provided in this code may be prescribed by ordinance.

History: En. Sec. 4789, Pol. C. 1895; re-en. Sec. 3258, Rev. C. 1907; re-en. Sec. 5028, R. C. M. 1921.

References

State ex rel. Quintin v. Edwards, 38 M 250, 269, 99 P 940.

Collateral References

Municipal Corporations⇨162 (1), 167, 196, 203, 204.
62 C.J.S. Municipal Corporations §§ 522, 542, 597, 622.

CHAPTER 8

EXECUTIVE POWERS—MAYOR—CLERK—TREASURER—CHIEF OF POLICE AND ATTORNEY

Section 11-801. Executive officers.
11-802. Powers of mayor.
11-803. Mayor to preside, sign warrants, etc.
11-804. Council to elect president.
11-805. Duties of clerk.
11-806. Financial statement of city or town—contents—copies, to whom furnished.
11-807. Duties of city treasurer.
11-808. Transfer of municipal funds—how made.
11-809. Cities may close inactive accounts, when.
11-810. Duties of chief of police.
11-811. Qualifications, term of office and duties of city attorney.

11-801. (5029) **Executive officers.** The executive officers of a city or town are the mayor, marshal, and such officers for the assessment, collection, auditing, safekeeping, and disbursing the revenue, and keeping the records and journals of the city or town, as the council may provide.

History: En. Sec. 4780, Pol. C. 1895; re-en. Sec. 3249, Rev. C. 1907; re-en. Sec. 5029, R. C. M. 1921. Cal Pol. C. Sec. 4385.

Cross-Reference

Destruction of records, sec. 59-515.

Collateral References

Municipal Corporations⚖123; Towns⚖27.

62 C.J.S. Municipal Corporations § 463; 87 C.J.S. Towns § 60.

11-802. (5030) **Powers of mayor.** The mayor is the chief executive officer of the city or town, and has power:

1. To nominate, and, with the consent of the council, to appoint all nonelective officers of the city or town, provided for by the council, except as provided in this title.

2. To suspend, and, with the consent of the council, to remove any nonelective officer, stating in the suspension or removal the cause thereof.

3. To cause the ordinances of the city or town to be executed, and to supervise the discharge of official duty by all subordinate officers.

4. To communicate to the council, at the beginning of every session, and oftener if deemed necessary, a statement of the affairs of the city or town, with such recommendations as he may deem proper.

5. To recommend to the council such measures connected with the public health, cleanliness, and ornament of the city or town, and the improvement of the government and finances, as he deems expedient.

6. To approve all ordinances and resolutions of the council adopted by it, and, in case the same do not meet his approbation, to return the same to the next regular meeting of the council, with his objections in writing, and no ordinance or resolution so vetoed by the mayor must go into effect unless the same be afterwards passed by two-thirds vote of the whole number of members of the council.

7. To veto any objectionable part of a resolution or ordinance, and approve the other parts. If the mayor fail to return any resolution or ordinance as aforesaid, the same takes effect without further action.

8. To call special meetings of the council, and when so called he

must state by message the object of the meeting, and the business of the meeting must be restricted to the object stated.

9. To cause to be presented, once in three months, a full and complete statement of the financial condition of the city or town.

10. To bid in for the city or town any property sold at a tax or judicial sale, where the city or town is a party or interested.

11. To procure and have in his custody the seal of the city or town.

12. To take and administer oaths.

13. To call on every male citizen of the city or town, over the age of eighteen years, to aid in the enforcement of the laws and ordinances in case of riots; to call out the militia to aid him in suppressing the same or other disorderly conduct, preventing and extinguishing fires, for securing the peace and safety of the city, or for carrying into effect any law or ordinance; and any person who does not obey such call forfeits to the city or town a fine not exceeding twenty-five dollars.

14. To require of any of the officers of a city or town an exhibit of his books and papers.

15. To grant pardons and remit fines and forfeitures for offenses against city or town ordinances, when in his judgment public justice would be thereby subserved; but he must report all pardons granted, with the reasons therefor, to the next council.

16. To perform such other duties as may be prescribed by law or by resolution or ordinance of the council.

17. He has such power as may be vested in him by ordinance of the city or town, in and over all places within five miles of the boundaries of the city or town, for the purpose of enforcing the health and quarantine ordinances and regulations thereof.

History: Ap. p. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R. C. M. 1921. Cal Pol. C. Sec. 4386.

Cross-References

Enforcement of gambling laws, sec. 94-2415.

Fires, investigation, sec. 82-1209.

Marriage, solemnization, sec. 48-116.

Preservation of peace, sec. 94-5202.

Subdivision 1, Appoint Nonelective Officers

In so far as the method of appointment of members of the police force is concerned, this section is repealed by section 11-1816. State ex rel. Wynne v. Quinn, 40 M 472, 480, 107 P 506.

The town clerk is an appointive officer, and the mayor of a city or town has power "to nominate, and, with the consent of the council, to appoint all nonelective officers of the city or town, provided for by the council." The power to nominate to fill a nonelective office also includes like authority when a vacancy arises therein; but in either event the appointment is not effective until concurred in by a majority of the city or town council. State ex rel. Peterson v. Peck, 91 M 5, 7, 4 P 2d 1086.

The nominee of a mayor for a city office (city engineer) who fails of confirmation by a majority of the city council as required by statute and ordinance does not assume the status of an officer. State ex rel. Sandquist v. Rogers, 93 M 355, 361, 18 P 2d 617.

Subdivision 2, Suspension and Removal

The power of suspension and removal, granted the mayor by the second subdivision of this section, is taken from him by section 11-1816. State ex rel. Quintin v. Edwards, 38 M 250, 270, 99 P 940.

Subdivision 8, Special Sessions

It is not necessary, in order to convene the council in special session, that a formal proclamation be issued by the mayor, or that notice shall be given. The law does require that the mayor shall deliver to the council a message stating the object of the meeting. O'Brien v. Drinkenberg, 41 M 538, 546, 111 P 137.

In an injunction suit to restrain the payment of municipal funds for work done in repairing sidewalks, in which one ground of the complaint was that though the meeting of the council at which the walk was ordered replaced was a special one, it was held without any notice, proclamation, or message of the mayor, as required by the eighth subdivision of this section, the plaintiff had the burden of proving that the meeting was a special one. O'Brien v. Drinkenberg, 41 M 538, 543, 111 P 137.

Status of Mayor Generally

While the mayor of a city is not, strictly speaking, a member of the council in the sense that an alderman is, yet he is such to the extent of the powers committed to him. (This section and section 11-803). State ex rel. O'Hern v. Loud, 92 M 307, 311, 14 P 2d 432.

In quo warranto proceedings, under section 11-803, providing that the mayor of a city shall be the presiding officer of the council and decide by his vote all ties, it was held that where the council was evenly divided on the question of confirmation of the mayor's appointee to the office of city attorney, he had the right to cast the decisive vote. State ex rel. O'Hern v. Loud, 92 M 307, 311, 14 P 2d 432, explained in 140 M 383, 400, 372 P 2d 930.

References

State ex rel. Morgan v. Knight, 76 M 71, 78, 245 P 267.

Collateral References

Municipal Corporations⇨168.
62 C.J.S. Municipal Corporations § 543.

11-803. (5031) **Mayor to preside, sign warrants, etc.** The mayor is the presiding officer of the council, must sign the journals thereof and all warrants on the city treasurer, and decide by his vote all ties, and has no other vote.

History: En. Sec. 4782, Pol. C. 1895; re-en. Sec. 3251, Rev. C. 1907; re-en. Sec. 5031, R. C. M. 1921.

Deciding of Tie Vote

Under the law as it existed in 1895, the mayor was deemed to be a constituent part of the council, and, where there was a tie vote of the aldermen on the confirmation of an officer, he had the right to vote for confirmation. State ex rel. Young v. Yates, 19 M 239, 241, 47 P 1004.

While the mayor of a city is not, strictly speaking, a member of the council in the sense that an alderman is, yet he is such to the extent of the powers committed to him. State ex rel. O'Hern v. Loud, 92 M 307, 308, 14 P 2d 432, explained in 140 M 383, 392, 400, 372 P 2d 930.

References

O'Brien v. Drinkenberg, 41 M 538, 543, 111 P 137; Lillis v. City of Big Timber, 103 M 206, 211, 62 P 2d 219.

11-804. (5032) **Council to elect president.** The council may elect a president, who, in the absence of the mayor, is the presiding officer and may perform the duties of mayor, and in the absence of the president the council may appoint one of its number to act in his place.

History: En. Sec. 4783, Pol. C. 1895; re-en. Sec. 3252, Rev. C. 1907; re-en. Sec. 5032, R. C. M. 1921.

Compensation of President

The council may or may not elect a president. When elected, he must be held to know whether provision has been made for his compensation; if none has been made in the mode prescribed by law, then he is entitled to none, and has no legal claim against the city therefor. McGillic v. Corby, 37 M 249, 255, 95 P 1063.

Reception of Reports

Where accountants are employed to audit the books of a city and their contract calls for a report to the city, but before it is made two copies thereof are handed to the mayor, at his request, one of which he presents to the city council, and the other he receives as his own, the mayor's duty is fully discharged, after seeing that the copy presented to the council finds its way into the hands of the city clerk, and is by him filed among the records of his office; the mayor has a right to retain the other copy among his private papers. City of Butte v. Nevin, 46 M 380, 383, 128 P 600.

Collateral References

Municipal Corporations⇨83.
62 C.J.S. Municipal Corporations § 389.

11-805. (5033) **Duties of clerk.** It is the duty of the clerk:

1. To attend all meetings of the council, to record and sign the proceedings thereof and all ordinances, bylaws, resolutions, and contracts passed, adopted, or entered into, and to sign, number, and keep a record of all licenses, commissions, or permits granted or authorized by the council.

2. To enter in a book all ordinances, resolutions, and bylaws passed and adopted by the council. Such book is called "The Ordinance Book."

3. To enter in a book kept for that purpose the date, amount, and person in whose favor and for what purpose warrants are drawn upon the city treasury; such book is called "The Finance Book."

4. To countersign and cause to be published or posted, as provided by law, all ordinances, bylaws, or resolutions passed and adopted by the council.

5. To file and keep all records, books, papers, or property belonging to the city or town, and to deliver the same to his sucessor when qualified.

6. To make and certify copies of all records, books, and papers in his possession, on the payment of like fees as are allowed county clerks, which fees must be paid into the city treasury.

7. To give notice of all elections as required by law, and to notify all persons of their election or appointment to office.

8. To make and keep a complete index of the journal ordinance book, finance book, and all other books and papers on file in his office.

9. To perform such duties in and about the assessment, levy, and collection of taxes and assessment as may be prescribed by law or ordinance.

10. To take and administer oaths, but must not charge or receive any fees therefor.

11. To certify to the county clerk, within ten days after their election and qualification, the names and terms for which they are elected, of the mayor, city clerk, and city treasurer.

12. To perform such other and further duties as the council may prescribe.

History: En. Sec. 4784, Pol. C. 1895; re-en. Sec. 3253, Rev. C. 1907; re-en. Sec. 5033, R. C. M. 1921. Cal Pol. C. Sec. 4393.

Documents Kept by Mayor

If the mayor chooses to keep a record including copies of documents which must be preserved in the files of the clerk's office, they are his private property, and title to them does not vest in the city by virtue of the fact that he is acting as its chief executive at the time. City of Butte v. Nevin, 46 M 380, 383, 128 P 600.

Protests against Improvement Districts

The presentation of protests or objections against the creation of special improvement districts is no part of the duties of the city clerk, and the leaving of such protests at the clerk's office is of no avail. Hensley v. City of Butte, 36 M 32, 38, 92 P 34. Compare Tiggerman v. City of Butte, 44 M 138, 142, 119 P 477.

Records of Official Acts

The mayor of a city in this state is not required to keep a record of his official acts. The duty to keep the files and records of the city appertains to the clerk, who is bound to deliver them to his successor. City of Butte v. Nevin, 46 M 380, 383, 128 P 600.

If a person has been lawfully elected a member of the city council, and has taken the required oath, the intention of the law is that the oath, when taken and subscribed, shall become a record of the

city, and it is the clerk's duty to file and keep it as such. It is also the clerk's duty to record the newly elected officer's vote on a question; and the performance of the clerk's duty, in either respect, may be enforced by mandamus. State ex rel. Wilson v. Willis, 47 M 548, 554, 133 P 962.

Under the circumstances, the relators' remedy was by writ of mandate to compel the mayor to nominate a person acceptable to the council as town clerk, who then would be entitled to the custody of the books and records of the town, under this section, subdivision 5. State ex rel. Peterson v. Peck, 91 M 5, 7, 4 P 2d 1086.

References

Harvey v. Town of Townsend, 57 M 407, 188 P 879.

Collateral References

Municipal Corporations⇐169.
62 C.J.S. Municipal Corporations § 544.

11-806. (5033.1) **Financial statement of city or town—contents—copies, to whom furnished.** Within sixty (60) days after the close of each fiscal year the city or town clerk of each city and town in this state must make out, in duplicate, a full and complete statement of the financial condition of the city or town for such fiscal year, showing:

1. The indebtedness of the city or town, funded and floating; the amount of each class of indebtedness; and the amount of money in the treasury subject to the payment of each class of indebtedness;

2. The amount of money received from taxes upon real and personal property;

3. The amount of money received from fines, penalties and forfeitures;

4. The amount of money received from licenses;

5. The amount of money received from all other sources, each source and the amount received therefrom being shown separately;

6. For each fund the amount of money, if any, on hand at the beginning of such fiscal year, the amount received by and the amount paid out during such fiscal year. The total amount of money paid out must be deducted from the sum of money on hand at the beginning of the fiscal year and money received during such year by the city or town treasurer, and a balance must be struck for each fund;

7. A concise description of all property owned by the city or town with an approximate estimate of the value thereof;

8. The rates of taxation and purposes for which levied during such fiscal year;

9. Such other information as may be, from time to time, required by the state examiner.

The forms on which such statement shall be made shall be prescribed by the state examiner.

The city or town clerk must, not later than the 31st day of August following the close of each fiscal year, transmit one copy of such statement to the state examiner, and must present the other copy thereof to the city or town council, or commission, at the first regular meeting thereof in the month of September.

If any city or town clerk shall fail to make and file a copy of such statement with the state examiner within the time above specified, it shall be the duty of the state examiner, without delay, to examine the books,

records and accounts of such city or town and to make therefrom such statement of the financial condition of such city or town for the immediately preceding fiscal year in the same manner and form as the same should have been made by such city or town clerk. Such examination shall be deemed a special examination under the provisions of section 5-910, and all of the provisions of such section shall apply thereto.

History: En. Sec. 1, Ch. 24, L. 1927; amd. Sec. 1, Ch. 19, L. 1945.

Collateral References

Municipal Corporations⇐885.
64 C.J.S. Municipal Corporations § 1885.

11-807. (5034) **Duties of city treasurer.** It shall be the duty of the city treasurer:

1. To receive all moneys that come to the city or town, either from taxation or otherwise, and to pay the same out on the warrant of the mayor, countersigned by the clerk, drawn in accordance with law.

2. To perform such duties in the collection of taxes, licenses, or assessments as are or may be prescribed by law or ordinances.

3. To present on the first Monday of each month to the council a full and detailed statement of the amounts of money belonging to the city or town, received by him and by him disbursed during the preceding month, and the state of each particular fund, which statement must be verified by his oath.

4. To keep the books and accounts of the city or town in such manner as to correctly present the condition of the finances thereof, which must always be open to the inspection of the mayor, council, or any member thereof.

5. To keep a separate account of each fund or appropriation, and the debits and credits thereof.

6. To give every person paying to him money as treasurer, a receipt therefor, specifying the date of payment, the amount, and for what paid.

7. To render at any time an account to the council, showing the money on hand and the condition of the treasury.

8. To keep a register of all warrants paid, called "The Registry Book," which must show the date, amount, and number, and the person to whom, and the fund from which the same was paid, and to deliver and file with the city clerk all vouchers, warrants, or orders paid by him.

9. To annually make out and submit to the city council, at its last meeting prior to May first, a detailed account of all receipts and expenditures during the past fiscal year, file the same with the clerk, and an abstract thereof must be published in some newspaper in the city or town, or, if none is published, such abstract must be posted in the room or building occupied by the council.

10. To pay out, in the order which they are registered, all warrants presented for payment, when there are funds in the treasury to pay the same.

11. To deposit all public moneys in his possession and under his control, excepting such as may be required for current business, in any solvent bank or banks located in such city or town, subject to national super-

vision or state examination, as the council shall designate, and no other, and the sums so deposited shall bear interest at the rate of two and one-half per centum per annum, payable quarter-annually.

History: En. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5034, R. C. M. 1921. Cal. Pol. C. Sec. 4392.

Deposit of Public Moneys

Under former statutes it was held that a city treasurer, who was obliged by law of the state and an ordinance of the city to keep the funds of the city on deposit, if he used reasonable prudence and caution in selecting the bank, and was without fault or negligence in keeping his deposit, was not liable for a loss occasioned by the failure of the bank in which he deposited the money. City of Livingston v. Woods, 20 M 91, 102, 49 P 437. Compare Commissioners of Jefferson County v. Lineberger, 3 M 231, 239.

Under this section, the city treasurer must deposit public moneys in such bank or banks as the city council shall designate, and under section 5036, R. C. M. 1921 (since repealed) he must take from the banks such security as the city council may prescribe, approve and deem fully sufficient to ensure the safety of deposits made by him. A city treasurer complied with the foregoing provisions; the city council deemed a bond in the sum of $15,000 sufficient to safeguard the deposits made by him though they exceeded at times the amount of the bond. At the time the designated city depository closed its doors its deposits did exceed the amount of the bond. Held, in a proceeding against the receiver of the insolvent bank to have the excess declared a preferred claim on the ground that it had been unlawfully deposited with the knowledge of the bank and therefore it became a trust fund, that, the treasurer having complied with the statutory requirements, the city must be deemed to have consented to the deposits as made, that they were legally made and that therefore they were general in character and hence that the city was not entitled to a preference. City of Missoula v. Dick, 76 M 502, 507, 248 P 193.

Misapplication of Fund by Treasurer

The office of city treasurer is a continuing one regardless of the person occupying the office at any particular time; the treasurer is the servant of the city, and not the agent of warrant holders, and where he misapplies trust funds such as for special improvement purposes, the municipality is liable to the warrant holders. Blackford v. City of Libby, 103 M 272, 278, 280, 62 P 2d 216.

Negotiability of Warrant

A city warrant is not a negotiable instrument in the sense of the law merchant, and, while it may be transferred by delivery or assignment, the transferee takes it subject to all legal and equitable defenses which exist to it in the hands of the payee. Lillis v. City of Big Timber, 103 M 206, 212, 62 P 2d 219.

Reports of Moneys Received and Disbursed

In an action by a city against the sureties on the official bond of the treasurer, reports of the treasurer to the city council of moneys received and disbursed during the month, made under this section, may be given in evidence against such sureties, and are prima facie true, and, when not contradicted by the sureties, are binding on them. City of Philipsburg v. Degenhart, 30 M 299, 304, 305, 76 P 694.

References

State ex rel. City of Cut Bank v. McNamer, 62 M 490, 495, 205 P 951; State ex rel. Riley v. McCarthy, 78 M 164, 253 P 311; State ex rel. Clark v. Bailey, 99 M 484, 44 P 2d 740; Griffen v. Opinion Publishing Co., 114 M 502, 517, 138 P 2d 580.

Collateral References

Municipal Corporations⇦169.
62 C.J.S. Municipal Corporations § 544.

11-808. (5035) **Transfer of municipal funds—how made.** No money must be transferred from one fund to another, except by ordinance or resolution of the council.

History: En. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5035, R. C. M. 1921.

Collateral References

Municipal Corporations⇦879.
64 C.J.S. Municipal Corporations § 1878.

11-809. Cities may close inactive accounts, when. Whenever the council of any city or town having a corporate existence in this state, or hereafter organized under any of the laws thereof, shall deem it necessary

to remove inactive accounts from its records where said accounts shall not have any further purpose, it shall be lawful for said council to direct the proper city or town officials to file claims against the respective inactive funds in favor of the general fund of said city or town, after which the council shall allow the same and cause the inactive funds to be closed and not continued in the record of active funds.

History: En. Sec. 1, Ch. 57, L. 1939.

Collateral References

Municipal Corporations⚖887.
64 C.J.S. Municipal Corporations § 1884.

11-810. (5037) **Duties of chief of police.** It is the duty of the chief of police:

1. To execute and return all process issued by the police judge, or directed to him by any legal authority, and to attend upon the police court regularly.

2. To arrest all persons guilty of a breach of the peace or for the violation of any city or town ordinance, and bring them before the police judge for trial.

3. To have charge and control of all policemen, subject to such rules as may be prescribed by ordinance, and to report to the council all delinquencies or neglect of duty or official misconduct of policemen for action of the council.

4. The chief of police has the same powers as a constable in the discharge of his duties, but he must not serve a process in any civil action or proceeding except when a city or town is a party.

5. To perform such other duties as the council may prescribe.

History: En. Sec. 4785, Pol. C. 1895; re-en. Sec. 3254, Rev. C. 1907; re-en. Sec. 5037, R. C. M. 1921.

Cross-Reference

Riotous or unlawful assembly, liability, sec. 94-5314.

Duties as Police Officer

The chief of police is a policeman or police officer in the same sense as is an ordinary policeman. When the circumstances demand it, he is required to perform all the duties of the ordinary policeman, for, though he has the additional duty of supervision and control of the entire force, this does not lessen or abridge the duties which are enjoined upon all police officers under the general laws of the state. State ex rel. Wynne v. Quinn, 40 M 472, 475, 107 P 506.

References

State ex rel. Marquette v. Police Court, 86 M 297, 310, 283 P 430.

Collateral References

Municipal Corporations⚖182.
62 C.J.S. Municipal Corporations § 565.

11-811. (5038) **Qualifications, term of office and duties of city attorney.** The city attorney to be appointed shall be a person who has been licensed to practice as an attorney in this state. He shall hold his office for two years, unless suspended or removed as provided by this act. It shall be the duty of the city attorney to attend before the police court and other courts of the city and the district court, and prosecute on behalf of the city, and he shall generally do and perform such other acts as pertain to the office of the city or corporation council. He shall, when required, draw for the use of the council contracts and ordinances for the government of the city, and, when required, give to the mayor or city council written opinions on questions pertaining to the duties and the rights, lia-

bilities, and powers of the corporation. For such services he shall receive such salary and fees as may be fixed by the city council by ordinance. Nothing herein shall be taken or construed as preventing the city council from employing other and additional counsel in special cases, and providing for the payment of such services. The city attorney may be suspended or removed from office by the city council for the neglect, violation, or disregard of the duties required by this act, or the ordinances of the city.

History: Ap. p. Sec. 6, p. 64, Ex. L. 1887; amd. Sec. 9, p. 182, L. 1889; amd. Sec. 4787, Pol C. 1895; re-en. Sec. 3256, Rev. C. 1907; re-en. Sec. 5038, R. C. M. 1921. Cal. Pol. C. Sec. 4391.

References

State ex rel. Morgan v. Knight, 76 M 71, 75, 245 P 267.

Collateral References

Municipal Corporations⇨138, 162 (1), 169.

62 C.J.S. Municipal Corporations §§ 476, 523, 544.

CHAPTER 9

POWERS OF CITY AND TOWN COUNCILS

Section 11-901. Powers of city councils.
11-902. Levy and collection of taxes.
11-903. Licenses—requirements.
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11-905. Building or hiring and lighting and heating buildings for municipal purposes.
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11-941. Sidewalks—prevention of animals or vehicles on—prevention of damage to.
11-942. Hitching of animals—racing and immoderate driving.
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11-977. Power of condemnation.
11-978. Appropriation of money and payment of debts and expenses.
11-979. Census may be taken.
11-980. Printing contract.
11-981. Securing water supply.
11-982. Creation of special improvement districts—assessments—expenses payable in warrants—interest on warrants.
11-983. Hats and bonnets in theaters and public amusement places.
11-984. Ditches, drains and flumes in city or town.
11-985. Noxious weed extermination—tax.
11-986. Acquisition of landing fields and parking areas—jurisdiction.
11-987. Power to license and regulate soft drink establishments and pool and billiard halls.
11-988. Power of cities and towns to acquire natural gas and distributing system therefor.
11-989. Inspection and measurement of gas and electricity.

11-901. (5039) **Powers of city councils.** The city or town council has power: To make and pass all bylaws, ordinances, orders, and resolutions, not repugnant to the constitution of the United States or of the state of Montana, or of the provisions of this title, necessary for the government

or management of the affairs of a city or town, for the execution of the powers vested in the body corporate, and for carrying into effect the provisions of this title.

History: Ap. p. Sec. 325, 5th Div. Comp. Stat. 1887; amd. Secs. 3, 4, and 5, p. 179, L. 1889; amd. Sec. 1, p. 113, L. 1893; amd. Sec. 4800, Pol. C. 1895; amd. Sec. 1, p. 203, L. 1897; re-en. Sec. 3259, Rev. C. 1907; re-en. Subd. 1, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. Cal Pol. C. Sec. 4408.

NOTE.—Section 5039 as it existed in the 1921 Code, contained all the powers of the city council and had 84 subdivisions. For convenience' sake, these have been divided and wil be found as sections 11-901 to 11-906, 11-909 to 11-986.

Cross-References

Ferries and wharves, powers of cities, sec. 16-1117.

Free employment offices, powers, sec. 3-1502.

Housing authorities, secs. 35-101 to 35-307.

Interlocal co-operation agreements, secs. 16-4901 to 16-4904.

General Welfare Clause

The business of conducting a rooming-house, though a legitimate one, is so far concerned with the health, morals and welfare of the public that it is within the police power of a city to regulate it under the authority conferred by this section, denominated the "general welfare clause." State ex rel. Altop v. City of Billings, 79 M 25, 32, 255 P 11.

A city ordinance which vests in its officials a discretion to grant or refuse to grant a license to carry on a lawful business, to be valid, need not, where the ordinance relates to the administration of a police regulation necessary to protect the general welfare, morals and safety of the public, prescribe all the conditions upon which such license shall be granted or refused; the fact that in instances it may be exercised arbitrarily, in the absence of specific directions, not being an argument against its validity, since in such a case the person discriminated against may apply to the courts for relief. State ex rel. Altop v. City of Billings, 79 M 25, 32, 255 P 11, distinguished in 144 M 599, 614, 399 P 2d 221.

Powers in General

As a city council has, under this section and section 11-1302, the sole power to determine the amount that shall be expended in carrying on the city government, it, and not the mayor, has the power to reduce the police force for economical reasons, or when it becomes unnecessarily large. State ex rel. Rowling v. City of Butte, 43 M 331, 336, 117 P 604, distinguished in 102 M 27, 39, 55 P 2d 671.

Under its general legislative power the council of a city or town may provide for the appointment of as many policemen, including a chief of police in case of a city, and a marshal in case of a town, as may be necessary to preserve the peace and enforce the ordinances. Grush v. Bishop, 46 M 97, 99, 126 P 619.

When a city is engaged in operating a municipal plant, under an authority granted by general law, it acts in a proprietary or business capacity, and stands upon the same footing as a private individual or business corporation similarly situated. Milligan v. City of Miles City, 51 M 374, 384, 153 P 276.

Where a city was authorized to conduct an electric light and power plant, it could lay a main to heat a building by the waste steam from the plant, and incidentally furnish steam for heat to private buildings abutting on the main. Milligan v. City of Miles City, 51 M 374, 384, 153 P 276.

A city has the power to install at public expense a lighting plant to supply light not only for its public buildings and streets, but also for use by its inhabitants. Milligan v. City of Miles City, 51 M 374, 384, 153 P 276.

A city has no inherent power to levy taxes on property within its corporate limits, its power in that respect being limited to that conferred by statute, which must be strictly construed. First Nat. Bank of Glendive v. Sorenson, 65 M 1, 8, 210 P 900.

The statute creating a municipality, or under which its exists, is the charter of its powers, and it has only such authority as is conferred expressly and such as is necessarily implied or is indispensable in order properly to accomplish the purpose of its organization. State ex rel. City of Butte v. Police Court, 65 M 94, 97, 210 P 1059.

In grants of authority to municipal corporations, authority to commit a nuisance will not be implied but must be expressed, since in the use of their private property they are subject to the same rules as private individuals, and when the use and enjoyment of a legislative grant does not necessarily and naturally create a nuisance, but the nuisance results from the method of the use and enjoyment, the grant constitutes no defense. Lennon v. City of Butte, 67 M 101, 105, 106, 214 P 1101.

Laws enacted in the exercise of the police power, whether by municipal corporations acting in pursuance of the laws of the state or by the state itself, must be reasonable, and are always subject to the provisions of both the federal and state constitutions and judicial scrutiny. Bettey v. City of Sidney, 79 M 314, 318, 257 P 1007.

The question of the reasonableness of an ordinance is, in the first instance, for the determination of a city or town council, and in the absence of a clear showing to the contrary its reasonableness will be presumed. Bettey v. City of Sidney, 79 M 314, 318, 257 P 1007.

Notwithstanding repeal of the state prohibition laws a city has the power to prohibit by ordinance, traffic in intoxicating liquors under its general powers granted it by this section and the specific provision of section 11-928, under which it may pass ordinances to prevent acts or conduct calculated to disturb the public peace or which are offensive to public morals. State ex rel. Moreland v. Police Court, 87 M 17, 22, 285 P 178.

A city ordinance which prohibits the installation of plumbing called "Durham work," made of certain material, in one- or two-story buildings, and permits its installation in all others over two stories high, is arbitrary and unreasonable class legislation and therefore invalid as in conflict with this section in the absence of evidence showing that the prohibited kind of material is detrimental to the health and safety of the people of the municipality. City of Missoula v. Swanberg, 116 M 232, 233, 149 P 2d 248.

Within the scope of its powers delegated to it by the legislature, a city council has the same right to enact binding ordinances as has the legislature to enact statutes, and practically the same rules of construction apply when the validity of an ordinance or a statute is under consideration by the courts. City of Missoula v. Swanberg, 116 M 232, 233, 149 P 2d 248.

Under its power to provide for the general welfare of its inhabitants, a city may provide for a flat rate charge to property owners for services of its employees in tapping into the water main. Leischner v. Knight, 135 M 109, 337 P 2d 359.

References

Palmer v. City of Helena, 19 M 61, 66, 47 P 209; Jordan v. Andrus, 27 M 22, 26, 69 P 118; In re O'Brien, 29 M 530, 540, 75 P 196; State ex rel. Rocky Mountain Bell Telephone Co. v. City of Red Lodge, 30 M 338, 343, 76 P 758; State ex rel. Quintin v. Edwards, 38 M 250, 266, 99 P 940; Johnson v. City of Great Falls, 38 M 369, 370, 99 P 1059; Barnard Realty Co. v. City of Butte, 48 M 102, 111, 136 P 1064; Kohn v. City of Missoula, 50 M 75, 77, 144 P 1087; Stettheimer v. City of Butte, 60 M 111, 116, 198 P 455; City of Helena v. Helena Light & Ry. Co., 63 M 108, 119, 207 P 337; State ex rel. Marquette v. Police Court, 86 M 297, 309, 283 P 430; Weber v. City of Helena, 89 M 109, 116, 297 P 455; Weber v. City of Helena, 89 M 128, 297 P 464; Campbell v. City of Helena, 92 M 366, 378, 16 P 2d 1; Marinkovich v. Tierney, 93 M 72, 87, 17 P 2d 93; State ex rel. Kern v. Arnold, 100 M 346, 358, 49 P 2d 976; Guillot v. State Highway Commission, 102 M 149, 154, 56 P 2d 1072; State ex rel. McIntire v. City of Libby, 107 M 216, 219, 82 P 2d 587; McBroom v. City of Polson, 137 M 33, 349 P 2d 1023, 1025; City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 211.

Collateral References

Municipal Corporations⇦60.

62 C.J.S. Municipal Corporations § 153.

Right of labor union or other organization for promotion or protection of interest of members to challenge validity of ordinance on behalf of members. 2 ALR 2d 917.

Municipal regulation of practice of photography. 7 ALR 2d 422, 426.

Municipal establishment or operation of off-street public parking facilities. 8 ALR 2d 373.

Taxicab or hack stands, validity of statute, ordinance, or regulation abolishing or forbidding granting of exclusive rights or franchise to. 8 ALR 2d 574.

Public regulation and prohibition of sound amplifiers or loud-speaker broadcasts in streets. 10 ALR 2d 627.

Validity and construction of regulations as to subdivision maps or plats. 11 ALR 2d 524.

Power of city, town, or county or their officials to compromise claim. 15 ALR 2d 1359.

Inclusion of tax exempt property in determining value of taxable property for debt limit purposes. 30 ALR 2d 903.

Installation or operation of parking meter as within governmental immunity from tort liability. 33 ALR 2d 761.

Tort liability of municipality or other governmental unit in connection with destruction of weeds and the like. 34 ALR 2d 1210.

Regulation of watch making, watch repairing and the like. 34 ALR 2d 1326.

Conclusiveness of declaration in ordinance of an emergency. 35 ALR 2d 586.

Operation of garage for maintenance and repair of municipal vehicles as governmental function. 36 ALR 2d 944.

Liability of municipalities for pollution of subterranean waters. 38 ALR 2d 1305.

11-902. (5039.1) **Levy and collection of taxes.** The city or town council has power: To levy and collect taxes for general and special purposes on all property within the town or city subject to taxation under the laws of the state.

History: En. Subd. 2, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Cross-References

Taxation, secs. 84-4701 to 84-4737.

Temporary authority for emergency tax levy by city council, see 84-3805 note.

Law Governing

This section and city ordinances must yield to chapter 96, Laws of 1923, fixing the time and method of collecting taxes and interest thereon. Thomas v. City of Missoula, 70 M 478, 482, 226 P 213.

Collateral References

Municipal Corporations⇐596 (1).

64 C.J.S. Municipal Corporations § 1978 (1).

38 Am. Jur. 67, Municipal Corporations, § 381 et seq.

11-903. (5039.2) **Licenses—requirements.** The city or town council has power: To license all industries, pursuits, professions, and occupations, and to impose penalties for failure to comply with such license requirements.

History: En. Subd. 3, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

NOTE.—This section held impliedly amended by section 66-411 (3228.29) as amended by section 4, chapter 183, Laws 1937, to the extent that section 11-903 may have authorized cities and towns to license barbers. Opinions of Attorney General, Vol. 17, No. 314.

Cross-Reference

Licensing of certain occupations, sec. 11-918.

Coal Dealer

Section 84-1402 requires every coal dealer in the state to pay annually to the state a license of one dollar and in addition thereto five cents per ton for every ton of coal sold by him during any one year upon which the mines license fee exacted by section 84-1302 has not been paid by the mine operator. Under subdivision 3 of section 5039, Revised Codes of 1921 the power of cities or towns to license an industry or business was limited to an amount of not to exceed the sum required by the state to be paid to it by the same business. Held, that a city ordinance exacting a fee of one dollar from coal dealers and in addition five cents for every ton of coal sold, without incorporating therein the clause limiting the payment of the five cents to coal upon which the mines license fee exacted by section 84-1302 had not been paid to the state, was invalid as in excess of the power of the city to impose. State ex rel. City of Butte v. Police Court, 65 M 94, 97, 210 P 1059.

No Power To License Liquor Sales

The Prohibition Act of 1917 repealing all conflicting acts and all municipal ordinances relating to issuance of liquor licenses, divested municipalities of power to license sale of liquor under general statutes. Stephens v. City of Great Falls, 119 M 368, 175 P 2d 408, 410.

Ordinance Required

In the absence of a licensing ordinance the city is powerless to attempt to exact license fees or to regulate the operation of any business. State ex rel. Willumsen v. City of Butte, 135 M 350, 340 P 2d 535.

Power To Impose License Tax

A city cannot raise revenue for general municipal purposes by the imposition of license taxes. State ex rel. City of Bozeman v. Police Court, 68 M 435, 445, 219 P 810.

While the legislature may not constitutionally authorize a city to provide revenue for general municipal purposes by the imposition of license taxes, it may properly authorize it to impose such a tax upon any industry or upon the right to transact any business which falls within the scope of police regulations. City of Bozeman v. Nelson, 73 M 147, 153, 237 P 528.

Although revenue may result incidentally from an undisputed exercise of the police power, that fact alone does not divest the regulation of its police character and make it an exercise of the taxing power. City of Bozeman v. Nelson, 73 M 147, 153, 237 P 528.

State Liquor Statutes Control

Special statutes subsequently enacted relating to liquor traffic and licensing of

sale of liquor control the more general statutes (this section and section 11-904) authorizing cities generally to license businesses and occupations and will be regarded as an exception to, or qualification of the prior general statutes. State ex rel. Wiley v. District Court, Sixteenth Judicial District, 118 M 50, 164 P 2d 358, 365.

Taxi License

Subdivision 3 of section 5039, Revised Codes of 1921 provided that the license fee which a city might impose upon industries and businesses must not exceed the sum required by statute when the state requires a license therefor. Chapter 154, Laws of 1923 (since repealed), while authorizing the state railroad commission to require the payment of a license not to exceed $10 per motor vehicle, does not declare that a license shall be exacted. A city imposed a license fee of $25 for the first taxi operated for hire and $12 for each additional one. Held, that in the absence of a showing that the railroad commission had exercised the power given it by chapter 154, the fee exacted by the city council cannot be said to exceed the fee imposed by the state for the same purpose. State ex rel. City of Bozeman v. Police Court, 68 M 435, 445, 219 P 810.

Taxicabs and auto-buses operated for hire are legitimate objects of license fees. City of Bozeman v. Nelson, 73 M 147, 153, 237 P 528.

References

State v. Stark, 100 M 365, 374, 52 P 2d 890.

Collateral References

Licenses⇐5½.

53 C.J.S. Licenses § 10.

37 Am. Jur. 956, Municipal Corporations, § 305 et seq.

Validity of ordinance interfering with privacy in restaurants. 5 ALR 965.

Regulations concerning location of laundries. 6 ALR 1597.

Public regulation or authorization of gas filling stations. 18 ALR 101; 29 ALR 450; 34 ALR 507; 42 ALR 978; 49 ALR 767; 55 ALR 256; 79 ALR 918 and 96 ALR 1337.

Regulation of barbers. 20 ALR 1111 and 98 ALR 1088.

Licensing and regulation of pool and billiard rooms and bowling alleys. 20 ALR 1482; 29 ALR 41; 53 ALR 149 and 72 ALR 1339.

Regulation of junk dealer. 30 ALR 1427 and 45 ALR 2d 1391.

Validity of regulations as to plumbers and plumbing. 36 ALR 1342 and 22 ALR 2d 816.

Public regulation of dry cleaning and dyeing establishments 49 ALR 110 and 128 ALR 678.

Municipal regulation of sale of poison, drugs, or medicines. 54 ALR 730, 735.

Validity of ordinance fixing closing hours for certain kinds of business. 55 ALR 242.

Municipal regulation of electricians and the installation of electrical work. 96 ALR 1506.

Regulation and sale of newspapers on the streets. 107 ALR 1275.

Regulation of auctions and auctioneers. 111 ALR 473.

Regulation of the sale of flowers or florist business. 124 ALR 547.

Regulation of tourist or trailer camps, motor courts, or motels. 22 ALR 2d 774.

Regulation of house to house canvassing by peddlers, etc. 35 ALR 2d 355.

Regulation of beauty shops or specialists. 56 ALR 2d 879.

Validity of ordinance in relation to undertaker or embalmers. 89 ALR 2d 1338.

11-904. (5039.3) **Issuing licenses.** The city or town council has power: To fix the amount, terms and manner of issuing and revoking licenses; but the council may refuse to issue licenses when it may deem it best for the public interests.

History: En. Subd. 4, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Abuse of Discretion

City council could not, at its discretion, deny developers a license to operate a trailer park, where developers had complied with the city's health ordinances, council disregarded the findings of the city's administrative officers, and developers had begun construction of the park before the area had been rezoned. State ex rel. Bennett v. Stow, 144 M 599, 399 P 2d 221.

Interference on Gross Abuse

Where the power to license has been properly delegated to cities and towns as it has been by this section, granting them the power to fix the amount, terms and manner of issuing and revoking licenses, or refuse to issue them, courts will not interfere in its exercise except when there has been a gross abuse of the discretion

in the premises. State ex rel. McIntire v. City of Libby, 107 M 216, 219, 82 P 2d 587.

Ordinance Required

Where the city's licensing ordinance did not include the operation of a call office for dry cleaning, the city was without jurisdiction to arrest the operator of such an establishment for conducting business without a license. State ex rel. Willumsen v. City of Butte, 135 M 350, 340 P 2d 535.

References

State v. Stark, 100 M 365, 374, 52 P 2d 890; State ex rel. Wiley v. District Court, Sixteenth Judicial District, 118 M 50, 164 P 2d 358, 365; Stephens v. City of Great Falls, 119 M 368, 175 P 2d 408, 410.

11-905. (5039.4) **Building or hiring and lighting and heating buildings for municipal purposes.** The city or town council has power: To build or hire all necessary buildings for the use of the city or town, and to heat and light the same.

History: En. Subd. 5, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Cross-Reference

Building specifications for accommodation of handicapped persons, secs. 69-3701 to 69-3719.

References

Dietrich v. City of Deer Lodge, 124 M 8, 218 P 2d 708, 710.

Collateral Rerferences

Municipal Corporations⇦221.
63 C.J.S. Municipal Corporations § 951.

11-906. (5039.5) **Streets, alleys, sidewalks, parks and public grounds.** The city or town council has power: To lay out, establish, open, alter, widen, extend, grade, pave, or otherwise improve streets, alleys, avenues, sidewalks, parks, and public grounds and vacate the same.

History: En. Subd. 6, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Cross-References

Athletic fields, power to procure, sec. 62-201.

Civic center, power to procure, sec. 62-201.

Golf course, power to procure, sec. 62-201.

Municipal parking areas, sec. 11-1018.

Parks and playgrounds, secs. 62-201 to 62-213.

Skating rinks, power to procure, sec. 62-201.

Swimming pools, sec. 62-201.

Youth center, power to procure, sec. 62-201.

Bond Issues

This section does not give the city or town council the power to incur indebtedness or issue bonds for street purposes. Dietrich v. City of Deer Lodge, 124 M 8, 218 P 2d 708, 711.

Grantor May Remove Restrictions by Waiver

Lands deeded to a city for park purposes by deeds providing for reversion to the grantors if used for any other purpose, may be used for some other purpose upon obtaining a waiver, quitclaim deed or unconditional deed from the owner of the reversionary interest, removing the restriction, whereupon the city will own the fee and use the property as it sees fit. Lloyd v. City of Great Falls, 107 M 442, 447, 86 P 2d 395.

Special Improvement District

The means provided by the legislature to carry out the authority created by this section is by means of a special assessment and the creation of a special improvement district under section 11-2201. Dietrich v. City of Deer Lodge, 124 M 8, 218 P 2d 708, 711.

Street Work within Exclusive Jurisdiction of City

With relation to work to be done on the streets of a city, such streets are within the exclusive jurisdiction of the municipality, through its council. State ex rel. City of Butte v. Healy, 105 M 227, 231, 70 P 2d 437.

Vacating a Park

Formal action need not be taken to vacate a park. It can be done by acts showing a clear intent to abandon the use of the land as a park. Smith v. Town of Hot Springs, 125 M 458, 240 P 2d 249, 250.

Under this section, a part of a park may be vacated as well as the whole. Smith v.

Town of Hot Springs, 125 M 458, 240 P 2d 249, 250.

Where Grantors Charged with Knowledge of City's Authority To Vacate Use for Park Purposes

In an action to enjoin a city from erecting a civic center building on land granted to it in 1889 and 1909 for park purposes by deeds providing for reversion to the grantors or their assigns if used for any other purpose, held, that the grantors in making their deeds were charged with knowledge that the city had the authority to vacate the use of the land for park purposes because of the provisions of sec. 325, 5th Div. Comp. Stat. 1887, and the amendment of that act in 1907, in effect at the time of dedication. Lloyd v. City of Great Falls, 107 M 442, 446, 86 P 2d 395, distinguished in 117 M 126, 138, 157 P 2d 1013.

Collateral References

Municipal Corporations⇨269 (1), 646, 657 (2), 721 (1).

63 C.J.S. Municipal Corporations §§ 1042-1047; 64 C.J.S. Municipal Corporations §§ 1653, 1665, 1676, 1818-1823.

Municipal establishment or operation of off-street public parking facilities. 8 ALR 2d 373.

11-907. City council may change street names or numbers. Any town or city council may in its judgment, when it appears to the best interest of the town or city, and the inhabitants thereof, expressed by resolution duly and regularly passed and adopted, change the name or number of any street or avenue, except that 51% of the property owners objecting to the change of name or question involved shall be supreme in this matter subject to the conditions provided for in section 11-908.

History: En. Sec. 1, Ch. 21, L. 1939.

Collateral References

Municipal Corporations⇨651½.

64 C.J.S. Municipal Corporations § 1654.

11-908. Plat and filing. That the town or city engineer, or if there be no such officer the council may employ one for such purpose, shall prepare a plat showing such subdivisions, streets and avenues affected by such change, with the appropriate notation of change thereon, and upon approval of such plat by the council, and the filing of the same as approved with the county clerk and recorder wherein the town or city is situated, the names or numbers of said streets and avenues shall be deemed changed in accordance to the terms of said resolution as provided for in section 11-907.

History: En. Sec. 2, Ch. 21, L. 1939.

11-909. (5039.6) **Lighting and cleaning streets—regulation of sidewalks—removal of offensive material from public ways and grounds—tax levy.** The city or town council has power: To provide for lighting and cleaning the streets, alleys, and avenues; to regulate the use of sidewalks, and to require the owners of the premises adjoining to keep the same free from snow or other obstruction; to regulate the disposition and removal of ashes, garbage, or other offensive matter in any street, alley, or on public grounds or on any premises, and to provide for levying the cost of such removal as a special tax against the property from which such matter was deposited, and may further, until full liquidation is realized, include in such tax an amount not to exceed twenty per centum (20%) of any floating indebtedness, consisting of valid outstanding warrants drawn and issued against the fund, or funds, used to defray the expense of removing such matter, existing at the close of business on the 30th day of June, 1943, together with not to exceed such per centum of the current

interest thereon from such last mentioned date, which moneys derived from such portion of such levy and assessment for such additional amount, if included in such tax, may only be expended towards liquidating such floating indebtedness, together with the interest thereon, and not otherwise.

History: En. Subd. 7, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 1, Ch. 93, L. 1943. See also history of section 11-901.

Garbage Disposal

Although this section gives a city the power to regulate the removal and disposition of garbage, it does not give it the right to so deposit it as to create a condition injurious to health or offensive to the senses and thus interfere with the comfortable enjoyment of life and property. Lennon v. City of Butte, 67 M 101, 105, 106, 214 P 1101.

Parking Meters

This section granting cities power to clean and enforce cleaning of the streets would not constitute parking meters a nuisance and obstruction of the streets. Glodt v. City of Missoula, 121 M 178, 190 P 2d 545, 548.

Police Power

The authority granted by this section to cities to remove garbage and to provide a special tax against the property from which it is removed to meet the cost falls within the police power in the interest of public health. Northern Pacific Ry. Co. v. Lutey, 104 M 321, 324, 66 P 2d 785.

Removal of Snow and Ice

Under an ordinance making it the duty of the occupant of premises to keep the adjoining sidewalks free from snow, ice, etc., the city has a right to proceed against the occupant, as well as the owner, whose duty in this respect is laid down in this section. The remedy against the occupant is merely cumulative, and its assertion is not inconsistent with the exercise of the power granted in this section. City of Helena v. Kent, 32 M 279, 288, 80 P 258, distinguished in 37 M 202, 206, 95 P 841.

A city ordinance which requires property owners to keep the sidewalks in front of their premises free from ice and snow under penalty of a fine is not intended for the protection of the individual by the owner, but as an aid to the city in discharging its primary duty in that behalf, such an ordinance but making the owner a joint agent with city employees in performing that duty, and therefore failure to comply with its requirements, with consequent injury to a pedestrian, does not give rise to a cause of action against the property owner. Childers v. Deschamps, 87 M 505, 513, 290 P 261.

Special Tax—When City Council's Determination Conclusive

The special tax provided for by this section, strictly speaking, is a device by which property owners are required to pay for services rendered. It bears some analogy to a special assessment in that municipal authorities must determine what property should be assessed in each instance. The city council's determination, pursuant to legislative authority, of the property benefited, in the absence of fraud or manifest mistake, is conclusive. Nothern Pacific Ry. Co. v. Lutey, 104 M 321, 324, 66 P 2d 785.

Where Part of Property Subject to Tax

Under the facts presented, the rule that where a part of a tax is illegal, and where the legal and illegal are inseparable, the whole must fall, held not applicable, because the only difference of opinion that can arise is whether certain property is subject to the tax. If it is not, then the tax as to it is illegal and can easily be separated from that which is subject thereto. And when the illegal can be separated from the legal, the entire tax will not fall. Since some of plaintiff's property was subject to tax it was not entitled to judgment on the pleadings. Northern Pacific Ry. Co. v. Lutey, 104 M 321, 325, 66 P 2d 785.

References

Dietrich v. City of Deer Lodge, 124 M 8, 218 P 2d 708, 710; Marchi v. Brackman, 130 M 228, 299 P 2d 761, 764.

Collateral References

Municipal Corporations⇐269, 272, 673.

63 C.J.S. Municipal Corporations §§ 1042, 1052; 64 C.J.S. Municipal Corporations § 1698.

Regulation of private garbage or rubbish removal services. 83 ALR 2d 799.

11-910. (5039.7) Regulation of public ways and grounds—obstructions to be prevented. The city or town council has power: To provide for and regulate street crossings, curbs, and gutters; to regulate and pre-

vent the use or obstruction of streets, sidewalks, and public grounds by signs, poles, wires, posting handbills or advertisements, or any obstruction.

History: En. Subd. 8, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Powers in General

The council is the governing body of the municipality, and, as such, is given the exclusive control of streets and highways. Snook v. City of Anaconda, 26 M 128, 134, 66 P 756; Ford v. City of Great Falls, 46 M 292, 305, 127 P 1004.

Collateral References

Municipal Corporations⇐661 (1), 692.
64 C.J.S. Municipal Corporations §§ 1687, 1744-1746.

11-911. (5039.8) **Traffic and sales on public ways and grounds.** The city or town council has power: To regulate and prohibit traffic and sales upon the streets, sidewalks, and public grounds.

History: En. Subd. 9, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Municipal Corporations⇐661 (1), 721 (1).
64 C.J.S. Municipal Corporations §§ 1687, 1818-1823.

Ordinances Covering Same Subject as State Laws

Since state traffic laws in effect in 1951 covered offenses both within and without municipalities, a city ordinance prohibiting drunken driving and providing a penalty therefor would be void. A municipal ordinance punishing an act made penal by a state law then existing, covering the same subject matter, must yield to the state law. City of Billings v. Herold, 130 M 138, 296 P 2d 263, 271. (Dissenting opinion, 130 M 138, 296 P 2d 263, 271.)

Parking Meters

A city has the power to install parking meters. Glodt v. City of Missoula, 121 M 178, 190 P 2d 545, 549.

11-912. (5039.9) **Speed regulation.** The city or town council has power: To regulate or prohibit the fast driving of horses, animals, or vehicles within the city or town.

History: En. Subd. 10, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Cross-Reference

Speed regulations, secs. 11-942, 11-1002.

Collateral References

Municipal Corporations⇐703 (4).
64 C.J.S. Municipal Corporations § 1764.

11-913. (5039.10) **Railroads—regulation of use and speed.** The city or town council has power: To regulate and control the laying of railroad tracks, and prohibit the use of engines and locomotives propelled by steam or otherwise, or to regulate the speed thereof when used.

History: En. Subd. 11, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Railroads⇐75 (3), 236.
74 C.J.S. Railroads §§ 104, 431.

11-914. (5039.11) **Lighting of railroad tracks—crossings—enforcement of requirements.** The city or town council has power: To require the lighting of any railroad track or route within a city or town, the cars of which are propelled by steam or otherwise, and fix and determine the number, style, and size of lamp posts, burners, lamps, and all other fixtures and apparatus necessary for such lighting, and the points of location of the lamp posts, and to require the construction of crossings on the line of any railroad track or route within the city or town, the cars of

which are propelled by stream or otherwise, where the said track intersects or crosses any street, alley, or public highway, or runs along the same, and to fix and determine the size and kind of such crossing and the grades thereof; and, in case the owner of such railroads fails to comply with such requirements, the council may cause the same to be done, and it may assess the expense thereof against such owner, and the same constitutes a lien on any property belonging to such owner within such city or town, and may be collected as other taxes.

History: En. Subd. 12, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Crossing and Lighting Railroad Tracks

This section does not apply to street railroads; hence an ordinance requiring a street railway company to light its track within the corporate limits, without expense to the city, is void. Helena Light & Ry. Co. v. City of Helena, 47 M 18, 37, 130 P 446.

Before a city may exercise the power conferred by this section, to order the construction of a subway street crossing necessitating a change in the grade of the street, it must comply with the provisions of sections 11-970 and 11-2601, they being limitations upon the exercise of its police power in that behalf. State ex rel. City of Miles City v. Northern Pacific Ry. Co., 88 M 529, 545, 295 P 257.

References

Jarvella v. Northern Pacific Ry. Co., 101 M 102, 111, 53 P 2d 446.

Collateral References

Railroads⇐238, 242.
74 C.J.S. Railroads §§ 430, 433.

11-915. (5039.12) **Street railroads—authorization and regulation.** The city or town council has power: To license and authorize the construction and operation of street railroads, and require them to conform to the grade of the street as the same are or may be established.

History: En. Subd. 13, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Police Powers

This section, taken in connection with the general provision contained in section 11-901, confers all the powers necessary for the policing of street railroads. Helena Light & Ry. Co. v. City of Helena, 47 M 18, 37, 130 P 446.

Railroads and Street Railroads Distinguished

The frequent use, in the laws of this state, of the prefix "street," before "railroads" or "railways," indicates the legislative intention to maintain a distinction between railroads and street railroads, and suggests that, in construing enactments touching railroads, they should not be held to apply to street railroads unless the intention that they should so apply is apparent. Helena Light & Ry. Co. v. City of Helena, 47 M 18, 34, 130 P 446.

Collateral References

Street Railroads⇐24 (1).
83 C.J.S. Street Railroads § 37.

11-916. (5039.13) **Numbering of houses and lots.** The city or town council has power: To regulate the numbering of houses and lots, and to change the same.

History: En. Subd. 14, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Municipal Corporations⇐601 (27).
62 C.J.S. Municipal Corporations § 226 (7).

11-917. (5039.14) **Water regulation.** The city or town council has power: To provide for the cleaning of waters, watercourses, and streams within the city, or to alter, straighten, or widen the same, and the draining

and filling in of ponds, wells, or shafts on private property, when necessary to the public health or public welfare.

History: En. Subd. 15, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Cross-Reference

Flood control projects of cities and towns, secs. 89-3301 to 89-3313.

References

Johnson v. City of Billings, 101 M 462, 478, 54 P 2d 579.

Collateral References

Municipal Corporations⇦714, 715.
64 C.J.S. Municipal Corporations § 1807.

11-918. (5039.15) **Licensing, taxing and regulation.** The city or town council has power: To license, tax, and regulate auctioneers, peddlers, pawnbrokers, secondhand and junk shops: motor vehicles and motor vehicle bodies, except those on commercial property, which are not otherwise taxed: drivers, porters, pool halls and soft drink parlors, billiard tables, tenpin alleys, shooting galleries, shows, circuses, street parades, theatrical performances, and places of amusements within the city or town; provided, that the power to license, tax, and regulate circuses and shows of like character shall extend three miles beyond the limits of the city or town.

History: En. Subd. 16, Sec. 5039, R. C. M. 1921; amd. Sec. 1. Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 1, Ch. 192, L. 1965. See also history of section 11-901.

Cross-References

Beer licenses, authority to impose, sec. 4-341.

Carrying on business without license, penalty, sec. 94-1511.

Liquor retailers, authority to license, sec. 4-430.

Pawnshop

An ordinance making it unlawful to keep open a pawnshop after six o'clock p. m. is not a prohibition of the business, but a regulation of it, authorized by this section. City of Butte v. Paltrovich, 30 M 18, 21, 75 P 521.

Police Regulations

The power conferred upon a city by this section is primarily to enact such police regulations, with reference to the occupations therein enumerated, as shall be necessary to the good order and general welfare of its citizens. City of Butte v. Paltrovich, 30 M 18, 21, 75 P 521.

Collateral References

Licenses⇦5½.
53 C.J.S. Licenses § 10.
37 Am. Jur. 956, Municipal Corporations, § 305 et seq.

Municipal regulation of practice of photography. 7 ALR 2d 422, 426.

Regulation of watch making, watch repairing and the like. 34 ALR 2d 1326.

Liability of municipality in damages for its refusal to grant, permit, license or franchise. 37 ALR 2d 694.

11-919. (5039.16) **Records of pawn, secondhand and junk shops, requirement of.** The city or town council has power: To require the owners and keepers of pawn, secondhand, and junk shops to keep a record of all articles purchased or pawned to them, which record, and the articles purchased or pawned, are subject to the inspection of all police officers of the city or town.

History: En. Subd. 17, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Pawnbrokers and Money Lenders⇦1, 2, 4.
70 C.J.S. Pawnbrokers § 2.

11-920. (5039.17) **Regulation of purchases from minors by pawn, secondhand and junk shops.** The city or town council has power: To prevent the keepers of pawn, secondhand, and junk shops from the purchas-

ing of any article from a minor, without the written consent of the parent or guardian of such minor.

History: En. Subd. 18, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

11-921. (5039.18) **Regulation of dances.** The city or town council has power: To regulate or prohibit dance houses within the city or town limits, and within three miles thereof.

History: En. Subd. 19, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Theaters and Shows⇐2.
86 C.J.S. Theaters and Shows § 4.

11-922. (5039.19) **Suppression of fraud and immoral publications.** The city or town council has power: To suppress and punish all fraudulent devices and practices for the purpose of obtaining money or property, and to prohibit the same or exhibition of immoral publications, prints, pictures or illustrations.

History: En. Subd. 20, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Municipal Corporations⇐598, 599; Obscenity⇐5, 7-9.
62 C.J.S. Municipal Corporations §§ 132, 135; 67 C.J.S. Obscenity § 7.

11-923. (5039.20) **Establishment and supervision of markets.** The city or town council has power: To establish markets and market houses, and provide for the supervision and use thereof.

History: En. Subd. 21, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Municipal Corporations⇐275.
63 C.J.S. Municipal Corporations § 1056.

11-924. (5039.21) **Inspection of foodstuffs.** The city or town council has power: To provide for and regulate the inspection of beef, pork, flour, meal, and all provisions, oils; to regulate the inspection of milk, water, butter, lard, and other provisions; to regulate the vending of meat, poultry, fish, game, and vegetables; to restrain and punish the forestalling of provisions.

History: En. Subd. 22, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Cross-Reference

Slaughterhouses, inspection, sec. 46-217.

Collateral References

Food⇐1.
36A C.J.S. Food §§ 5-9.

Validity, construction, and application of statutes or ordinances relating to inspection of food sold at retail. 127 ALR 322.

11-925. (5039.22) **Weighing, measuring and inspecting.** The city or town council has power: To regulate the inspection, weighing, and measuring of wood, coal, stone, corn, or other grain, and hay, within the city or town.

History: En. Subd. 23, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Weights and Measures⇐1-3.
94 C.J.S. Weights and Measures § 3.

11-926. (5039.23) **Regulation of vaults, cisterns, hydrants, pumps, sewers and gutters.** The city or town council has power: To regulate the construction, use, and repair of vaults, cisterns, hydrants, pumps, sewers, and gutters.

History: En. Subd. 24, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Municipal Corporations⇐710, 711.

64 C.J.S. Municipal Corporations §§ 1805, 1806.

11-927. (5039.24) **Prevention of and punishment for disturbing the peace.** The city or town council has power: To prevent and punish intoxication, fights, riots, loud noises, disorderly conduct, obscenity, and acts or conduct calculated to disturb the public peace, or which are offensive to public morals, within the city or town, and within three miles of the limits thereof.

History: En. Subd. 25, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Protect Public Morals

Notwithstanding repeal of the state prohibition laws, a city has the power to prohibit, by ordinance, traffic in intoxicating liquors under its general powers granted it by section 11-901 and the specific provision of this section thereof under which it may pass ordinances to prevent acts or conduct calculated to disturb the public peace or which are offensive to public morals. State ex rel. Moreland v. Police Court, 87 M 17, 22, 285 P 193.

Collateral References

Municipal Corporations⇐596, 598.

62 C.J.S. Municipal Corporations §§ 132, 135.

Public regulation and prohibition of sound amplifiers or loud speaker broadcasts in streets. 10 ALR 2d 627.

11-928. (5039.25) **Limitation of combustible buildings—fire limits.** The city or town council has power: For the purpose of guarding against fire, to prescribe the limits within which wooden or combustible buildings must not be erected, placed, or repaired, and to establish fire limits within the city or town.

History: En. Subd. 26, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Fire Protection

While a city or town may, under this section, by ordinance wholly forbid the erection of wooden buildings within fire limits, it is without power to wholly prohibit the repair of a building lawfully erected prior to the creation of fire limits including the building therein, an ordinance so declaring being unreasonable. Bettey v. City of Sidney, 79 M 314, 318, 257 P 1007.

Measures for the protection of life and property against fire hazards fall within the police power of the state, which power may either be exercised by the state through proper machinery or delegated for local administration to cities or towns. State ex rel. Brooks v. Cook, 84 M 478, 483, 276 P 958, explained in 100 M 346, 359, 49 P 2d 976.

Collateral References

Municipal Corporations⇐603.

62 C.J.S. Municipal Corporations § 255.

11-929. (5039.26) **Fire department — alarm — police telegraph.** The city or town council has power: To establish a fire department, and prescribe and regulate its duties; to maintain a fire alarm and police telegraph.

History: En. Subd. 27, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Cross-Reference

Fire department, secs. 11-1901 to 11-1940.

Maintenance of Fire Department Proprietary Function of City

Under this section and sections 11-930 and 11-931 and section 11-1901 (before amendment), a city is empowered, but not compelled, to maintain a fire department and under section 11-1902, firemen are not officers of the city; therefore a city operates such department in its proprietary capacity, except when it is engaged in extinguishment of fires, going to and from the scene of a fire or testing equipment for such occasions, when it is exercising governmental functions. State ex rel. Kern v. Arnold, 100 M 346, 358, 49 P 2d 976.

Collateral References

Municipal Corporations⇨603.
62 C.J.S. Municipal Corporations § 255.

11-930. (5039.27) **Provision for fire equipment.** The city or town council has power: To erect engine, hose, and hook-and-ladder houses, and provide engines and other implements for the extinguishment of fire.

History: En. Subd. 28, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

11-931. (5039.28) **Inspection and regulation of fire hazards.** The city or town council has power: To inspect chimneys, flues, fireplaces, stove pipes, ruins, structures, and boilers, and, when dangerous, to require the same to be removed or put in order, and prohibit the use thereof until safe.

History: En. Subd. 29, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

11-932. (5039.29) **Regulation of explosives and inflammable material.** The city or town council has power: To regulate and prevent the storage or handling of gunpowder, giant powder, nitroglycerine, or other inflammable explosives or materials, tar, pitch, kerosene, oils, and turpentine, and to prohibit the storage of the same within three miles of the city limits.

History: En. Subd. 30, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Cross-Reference

Storage of explosives, sec. 69-1923.

Collateral References

Explosives⇨2, 3.
35 C.J.S. Explosives § 3.

11-933. (5039.30) **Bonfires—pyrotechnics—toy pistols or guns—regulation by council.** The city or town council has power: To regulate or prohibit the building of bonfires, the explosion, use or selling of fireworks, firecrackers, torpedoes, or other pyrotechnics or toy pistols or guns within the city or town.

History: En. Subd. 31, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

11-934. (5039.31) **Cruelty to animals.** The city or town council has power: To prohibit and punish cruelty to animals.

History: En. Subd. 32, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Municipal Corporations⇨604.
62 C.J.S. Municipal Corporations § 217.

11-935. (5039.32) **Abatement of and regulation concerning nuisances.** The city or town council has power: To define and abate nuisances, and to impose fines upon persons guilty of creating, continuing, or suffering a nuisance to exist on the premises which they occupy or control.

History: En. Subd. 33, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Imposition of Fine

Under the rule of statutory construction that a specific provision is paramount to a general one, held, in a prosecution for maintaining a nuisance, that the specific provision of this section, empowering a city to impose a fine upon persons maintaining a nuisance, is controlling, as against the power conferred by section 11-950 to impose fines and penalties for the violation of a city ordinance generally, up to ninety days in jail. City of Bozeman v. Merrell, 81 M 19, 25, 28, 261 P 876.

Collateral References

Municipal Corporations⇐605, 623 (1-4).
62 C.J.S. Municipal Corporations §§ 279, 281.

11-936. (5039.33) **Vagrants and mendicants.** The city or town council has power: To define vagrancy, and to restrain and punish vagrants, mendicants, and persons guilty of disorderly conduct.

History: En. Subd. 34, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Vagrancy

City and town councils have express authority from the state to define and punish vagrancy under this section. State ex rel. City of Butte v. District Court, 37 M 202, 204, 95 P 841.

Collateral References

Municipal Corporations⇐591 (1), 596.
62 C.J.S. Municipal Corporations § 306.

11-937. (5039.34) **Jail—maintaining and governing.** The city or town council has power: To establish and maintain a jail for the confinement of persons convicted of violating the ordinances of the city or town; to make rules for the government of the same, and to cause the prisoners to work on streets or elsewhere within three miles of the city.

History: En. Subd. 35, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

References

Dietrich v. City of Deer Lodge, 124 M 8, 218 P 2d 708, 710.

Collateral References

Prisons⇐4.
67 C.J.S. Prisons § 5.

11-938. (5039.35) **Animals running at large.** The city or town council has power: To regulate, restrain, or prohibit the running at large of horses, cattle, swine, sheep, goats, and dogs, or other animals, and to authorize the impounding and sale thereof, if found at large contrary to ordinances.

History: En. Subd. 36, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Cross-Reference

Impounding of livestock, secs. 46-2001 to 46-2008.

Collateral References

Municipal Corporations⇐604, 625, 629.
62 C.J.S. Municipal Corporations § 214.
4 Am. Jur. 2d 291, Animals, § 40 et seq.

11-939. (5039.36) **Licensing of dogs.** The city or town council has power: To license the keeping of dogs, and to provide for the killing or destruction thereof, if found running at large without license.

History: En. Subd. 37, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Animals⇐4.
3 C.J.S. Animals §§ 10, 11.

11-940. (5039.37) **Obstructing streets, sidewalks and public grounds to be prevented.** The city or town council has power: To prevent the encumbering of streets, sidewalks, alleys, or public grounds with carriages, wagons, lumber, firewood, or other obstacles or materials.

History: En. Subd. 38, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Obedience to Regulations

This legislative grant carries the implied power to compel observance of regulations thereunder. Lazich v. City of Butte, 116 M 386, 389, 154 P 2d 260.

Collateral References

Municipal Corporations⇐692.

64 C.J.S. Municipal Corporations §§ 1744-1748.

11-941. (5039.38) **Sidewalks—prevention of animals or vehicles on —prevention of damage to.** The city or town council has power: To prevent the riding or driving of animals, or the drawing or riding of vehicles of any kind on the sidewalks of the city, or the doing damage in any way to the sidewalks.

History: En. Subd. 39, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Cross-Reference

Driving livestock on sidewalk, penalty, sec. 94-3331.

Collateral References

Municipal Corporations⇐661 (1), 704.

64 C.J.S. Municipal Corporations §§ 1687, 1775.

11-942. (5039.39) **Hitching of animals—racing and immoderate driving.** The city or town council has power: To prevent horse racing, or immoderate driving or riding in the streets of the city or town, and to regulate and provide for the hitching of all animals on the streets.

History: En. Subd. 40, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

11-943. (5039.40) **Regulation of coasting, skating, sliding and other amusements.** The city or town council has power: To regulate or prohibit coasting, skating, sliding, or tobogganning on the streets or alleys, or the indulgence in other amusements dangerous or annoying to the inhabitants, or having a tendency to frighten animals.

History: En. Subd. 41, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Municipal Corporations⇐704.

64 C.J.S. Municipal Corporations §§ 1775, 1776.

11-944. (5039.41) **Location of businesses and factories.** The city or town council has power: To regulate the location of slaughterhouses, breweries, distilleries, livery stables, foundries, blacksmith shops, planing mills, soap factories, and tanneries within the city or town, and to prohibit any offensive and unwholesome establishments within the city or town limits, or within three miles thereof.

History: En. Subd. 42, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Municipal Corporations⇐605, 623, 625.

62 C.J.S. Municipal Corporations §§ 279, 280.

11-945. (5039.42) **Erection of poles, wires, rods and cables.** The city or town council has power: To regulate or suppress the erection of poles and the stringing of wires, rods, or cables, in the streets, alleys, or within the limits of any city or town.

History: En. Subd. 43, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Regulations as to Poles, Wires, Etc.

This section, at most, does not enable a corporation or individual wishing to engage in the telegraph or telephone business to do so. The provision only leaves it to the option of the cities and towns to legislate upon this subject, and, if they do not do so, they cannot be coerced into acting any more than the legislature itself. State ex rel. Crum v. City of Helena, 34 M 67, 73, 85 P 744.

The police powers granted to cities and towns by section 11-910 and this section, relative to the regulation of the use of the streets by the erection of telegraph or telephone poles, the stringing of wires thereon, etc., are preserved to them by the concluding portion of section 70-301. City of Butte v. Montana Independent Telephone Co., 50 M 574, 581, 148 P 384.

11-946. (5039.43) **Boards of health.** The city or town council has powers: To provide for a board of health, and to prescribe its powers and duties, and when such board of health is provided, for the same to have jurisdiction within the city or town limits, and within three miles thereof.

History: En. Subd. 44, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Cross-Reference

Local boards of health, sec. 69-4501 et seq.

Collateral References

Health⊂⊃3.
39 C.J.S. Health §§ 4, 7.

11-947. (5039.44) **Detention hospitals.** The city or town council has power: To establish at a suitable place, within or without the limits of the city or town, in case of necessity, a hospital to prevent the spread of smallpox, or other contagious or infectious diseases, and to regulate the control thereof, and do all other acts which may be necessary for the promotion of health, and to prevent the spread of infectious or contagious diseases within the city or town.

History: En. Subd. 45, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

References

Dietrich v. City of Deer Lodge, 124 M 8, 218 P 2d 708, 710.

Collateral References

Hospitals⊂⊃2.
41 C.J.S. Hospitals § 4.

Power of municipal corporation to provide hospital. 25 ALR 612.

11-948. (5039.45) **Cemeteries.** The city or town council has power: To establish and regulate cemeteries, within or without the city or town, and acquire lands for this purpose, and prohibit the establishment of cemeteries within three miles of the city or town.

History: En. Subd. 46, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Cross-References

Cemeteries, control by cities and towns, secs. 9-301 to 9-307.

Cemeteries, establishment, sec. 9-401.

Collateral References

Cemeteries⊂⊃1.
14 C.J.S. Cemeteries § 2.

11-949. (5039.46) **Officers' and employees' duties and compensation.** The city or town council has power: To fix compensation, and to prescribe the duties of all officers and other employees of the city or town, subject to the limitations mentioned in this code.

History: En. Subd. 47, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Cross-References

Discharge from military service, restoration to former position, secs. 77-701 to 77-708.

Preference for Montana labor, secs. 41-701 to 41-703.

Vacations for employees, secs. 59-1001 to 59-1007.

Veterans, preference in public employment, sec. 77-501.

Collateral References

Municipal Corporations⇐589.

62 C.J.S. Municipal Corporations § 313.

11-950. (5039.47) **Penalties for violations of ordinances—limitations.** The city or town council has power: To impose fines and penalties for the violation of any city ordinance, but no fine or penalty must exceed three hundred dollars, and no imprisonment must exceed ninety days for any one offense.

History: En. Subd. 48, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Commission-Manager Cities

The powers of a city operating under the commission-manager plan granted by section 11-3210, with respect to punishments of violations of its ordinances, are the same as and no greater than those granted by this section to cities generally. City of Bozeman v. Merrell, 81 M 19, 25, 28, 261 P 876.

Imposition of Fine

Under the rule of statutory construction that a specific provision is paramount to a general one, held, in a prosecution for maintaining a nuisance, that the specific provision of section 11-935, empowering a city to impose a fine upon persons maintaining a nuisance, is controlling, as against the power conferred by this section to impose fines and penalties for the violation of a city ordinance generally, up to ninety days in jail. City of Bozeman v. Merrell, 81 M 19, 25, 28, 261 P 876.

Invalid Ordinance

A town ordinance which in effect adopted all state laws defining misdemeanors and made them town ordinances, with penalties limited as provided by this section, was invalid as containing more than one subject in violation of the prohibition set forth in section 11-1102. Town of White Sulphur Springs v. Voise, 136 M 1, 343 P 2d 855, 865.

Collateral References

Municipal Corporations⇐643.

62 C.J.S. Municipal Corporations §§ 351-360.

11-951. (5039.48) **Poll tax—limitation on amount—work for failure to pay.** The city or town council has power: To levy and collect annually from each able-bodied male resident of the city or town, between the ages of twenty-one and forty-five years, a poll tax not exceeding three dollars per capita; and in case of failure or refusal of any person within the prescribed age to pay said tax, to provide by ordinance that the person failing or refusing must work one day on the public streets of the city.

History: En. Subd. 49, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Cross-Reference

Poll tax, secs. 84-4732 to 84-4736.

Collateral References

Municipal Corporations⇐962.

64 C.J.S. Municipal Corporations § 1963.

11-952. (5039.49) **Partition fence and party wall regulation.** The city or town council has power: To regulate partition fences and party walls not already constructed.

History: En. Subd. 50, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Party Walls⇐3.
36A C.J.S. Fences §§ 8, 9; 69 C.J.S. Party Walls § 4.

11-953. (5039.50) **Construction specification—fire escapes.** The city or town council has power: To prescribe the thickness, strength, and manner of constructing stone, brick, and other buildings, and to order the construction of fire escapes thereon.

History: En. Subd. 51, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Buildings

Where defendants, at considerable cost, had practically completed a building to be used as a livery stable within the residential portion of a city, whereupon an ordinance was passed by the council requiring persons desiring to engage in such business to first obtain a permit, the same not being in terms applicable to livery stables then in existence within the city limits, such ordinance was an unlawful discrimination between defendants and others engaged in the same business at the time of its enactment. City of Billings v. Cook, 35 M 95, 104, 88 P 656.

Collateral References

Municipal Corporations⇐603, 621, 625.
62 C.J.S. Municipal Corporations § 254.

11-954. (5039.51) **Use of county jail.** The city or town council has power: To use the county jail for the confinement or punishment of offenders, subject to such conditions as are imposed by law, and with the consent of the board of county commissioners.

History: En. Subd. 52, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Prisons⇐3.
72 C.J.S. Prisons § 4.

11-955. (5039.52) **Workhouse — construction authorized — use.** The city or town council has power: To erect and organize a workhouse in or near a city or town; and any person who fails or neglects to pay any fine or costs imposed on him by any ordinance may be committed to the workhouse until such fine is paid.

History: En. Subd. 53, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

References

Dietrich v. City of Deer Lodge, 124 M 8, 218 P 2d 708, 710.

Collateral References

Prisons⇐1.
72 C.J.S. Prisons § 2.

11-956. (5039.53) **Licensing of vehicles and carriages—rates.** The city or town council has power: To license and regulate automobiles, trucks, hackney carriages, carts, omnibuses, wagons, and drays, and to fix the rate to be charged for the carriage of persons and property within the city or town, and to the public works and property without the limits of the city or town.

History: En. Subd. 54, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Taxicabs

An ordinance requiring taxicab drivers to occupy a position by the side of their vehicles along the curb line of the street fronting a railway station, and prohibiting them from soliciting patronage on railway property, held a valid exercise of the police power as against the objections that it was in conflict with the due process of law clause of the federal and state constitutions, indirectly interfered with inter-

state commerce carried on partially within the state, and impaired the obligations of contracts between the operator of the taxicabs and railway companies. City of Butte v. Roberts, 94 M 482, 487, 23 P 2d 342.

Collateral References

Licenses⇨5½.
53 C.J.S. Licenses § 10.

Conflict between statutes and local regulations as to automobile. 21 ALR 1186; 64 ALR 993 and 147 ALR 522.

Validity of statute or ordinance relating to granting or revocation of license or permit to operate automobile. 71 ALR 616; 108 ALR 1162 and 125 ALR 1459.

11-957. (5039.54) **Fire hazardous manufactories—firearms—concealed weapons.** The city or town council has power: To regulate, restrain, or prevent the carrying on of manufactories dangerous in causing or producing fires, and to prevent and suppress the sale of firearms, and carrying of concealed weapons.

History: En. Subd. 55, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Municipal Corporations⇨595, 603.
53 C.J.S. Licenses §§ 132, 254.

11-958. (5039.55) **Weights and measures — sealer.** The city or town council has power: To establish standard weights and measures to be used in the city or town, and to provide for a sealer of standard weights and measures, who has jurisdiction within the city or town.

History: En. Subd. 56, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Weights and Measures⇨1-3.
94 C.J.S. Weights and Measures § 3.

11-959. (5039.56) **Inspection and measuring of building materials.** The city or town council has power: To provide for the inspection and measuring of lumber and other building materials.

History: En. Subd. 57, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Municipal Corporations⇨601 (28).
62 C.J.S. Municipal Corporations § 224.

11-960. (5039.57) **Arrest of persons.** The city or town council has power: To make regulations authorizing the police of the city or town to make arrests of persons charged with crime, within the limits of the city or town and within five miles thereof, and along the line of water supply of the city or town.

History: En. Subd. 58, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Municipal Corporations⇨596.
62 C.J.S. Municipal Corporations § 134.

11-961. (5039.58) **Planting and protection of trees.** The city or town council has power: To provide for the planting of trees and the protection of the same.

History: En. Subd. 59, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Municipal Corporations⇨663 (3), 678.
64 C.J.S. Municipal Corporations §§ 1685, 1693.

11-962. (5039.59) **Reports of officers may be required.** The city or town council has power: To require from an officer at any time a report in detail of the transactions in his office, or any matter connected therewith.

History: En. Subd. 60, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Municipal Corporations⇐170, 744.
62 C.J.S. Municipal Corporations § 545.

11-963. (5039.60) **Sales of poisons and opium.** The city or town council has power: To regulate the sales of poisons, and to punish any person for selling or using opium, or any preparation thereof, or having the same or any implement to be used in smoking it in his possession, or for keeping, maintaining, visiting, or contributing to the support of a room or place where the same is smoked or used. Druggists may sell opium or any preparation thereof, subject to the general laws of the state in relation thereto.

History: En. Subd. 61, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Cross-Reference

Uniform Drug Act, secs. 54-101 to 54-128.

Collateral References

Poisons⇐2, 3.
72 C.J.S. Poisons § 2.

11-964. (5039.61) **Disposal or lease of city property—approval of electors, when required.** The city or town council has power: To sell, dispose of, or lease any property belonging to a city or town, provided, however, that such lease or transfer be made by ordinance or resolution passed by a two-thirds vote of all the members of the council; and provided further that if such property be held in trust for a specific purpose such sale or lease thereof be approved by a majority vote of taxpayers of such municipality cast at an election called for that purpose; and provided further that nothing herein contained shall be construed to abrogate the power of the board of park commissioners to lease all lands owned by the city heretofore acquired for parks within the limitations prescribed by subdivision 5 of section 62-204.

History: En. Subd. 62, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 1, Ch. 35, L. 1937. See also history of section 11-901.

Lease to Private Club

Lease of a golf course and part of club house to private club, which contained no provisions safeguarding the rights of the inhabitants of the city and which was not submitted to the voters for approval at a special election, is void. Hames v. City of Polson, 123 M 469, 215 P 2d 950.

When Leasing Not Required To Be Submitted to Vote

Even if the municipal auditorium was held in trust for specific purposes, question of leasing of the auditorium to a private individual for the purpose of exhibiting moving pictures was not required to be submitted to the taxpayers at an election, where it did not appear that the lease would interfere with the use of property for the purposes for which it was being held in trust. Colwell v. City of Great Falls, 117 M 126, 145, 157 P 2d 1013, distinguished in 123 M 469, 481, 215 P 2d 950.

Collateral References

38 Am. Jur. 255, Municipal Corporations, § 567 et seq.

Sufficiency of compliance with condition of sale or lease by municipality of public utility plants. 52 ALR 1052.

Power of municipality to sell, lease, or mortgage public utility plant, or interest therein. 61 ALR 2d 595.

11-965. (5039.62) **Contracts.** The city or town council has power: To make any and all contracts necessary to carry into effect the powers

granted by this code, and to provide for the manner of executing the same.

History: En. Subd. 63, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Award to Lowest Responsible Bidder

The mode of exercising the power granted by this section is subject to the limitation prescribed in that section of the code in reference to the awarding by municipalities of contracts exceeding a certain amount to the lowest responsible bidder; this limitation is, furthermore, exclusive, and applies to all municipal bodies. Missoula Street Ry. Co. v. City of Missoula, 47 M 85, 95, 130 P 771.

Legislative Intent

The purpose of the legislature, in employing the very general language used in this section and in section 11-975, was not to surrender fully the distinctively governmental function to regulate rates, but rather to permit municipalities to protect themselves and their inhabitants against extortionate rates until the state itself should act in the premises. State ex rel. City of Billings v. Billings Gas Co., 55 M 102, 111, 173 P 799.

Public Utility Rates

Under section 11-975 and this section, a city may contract for rates with a public utility, subject, however, to the paramount authority of the state to exercise its power in the premises whenever it chooses to do so. State ex rel. City of Billings v. Billings Gas Co., 55 M 102, 110, 173 P 799, distinguished in 99 M 465, 478, 44 P 2d 735.

References

City of Baker v. Montana Petroleum Co., 99 M 465, 44 P 2d 735.

Collateral References

Municipal Corporations⇐226.

63 C.J.S. Municipal Corporations §§ 973, 974, 976-980.

11-966. (5039.63) **Purposes for which indebtedness may be incurred—limitation—additional indebtedness for sewer or water system—procuring water supply and system—jurisdiction of public works appurtenances.** The city or town council has power: (1) To contract an indebtedness on behalf of a city or town, upon the credit thereof, by borrowing money or issuing bonds for the following purposes, to wit: Erection of public buildings, construction of sewers, sewage treatment and disposal plants, bridges, docks, wharves, breakwaters, piers, jetties, moles, waterworks, reservoirs and reservoir sites, lighting plants, supplying the city or town with water by contract, the purchase of fire apparatus, street and other equipment, the construction or purchase of canals or ditches and water rights for supplying the city or town with water, building, purchasing, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water, to acquire, open and/or widen any street and to improve the same by constructing, reconstructing and repairing pavement, gutters, curbs and vehicle parking strips and to pay all or any portion of the cost thereof, and the funding of outstanding warrants and maturing bonds; provided, that the total amount of indebtedness authorized to be contracted in any form, including the then existing indebtedness, must not, at any time, exceed five per centum (5%) of the total value of the taxable property of the city or town, as ascertained by the last assessment for state and county taxes, said words "value of the taxable property" being used herein in the same sense as in section 6 of article XIII of the constitution; provided, that no money must be borrowed on bonds issued for the construction, purchase, or securing of a water plant, water system, water supply, sewage treatment and disposal plant, or sewerage system, until the proposition has been submitted to the vote of the taxpayers affected thereby of the city or town, and the majority vote cast in favor thereof; and, further

provided, that an additional indebtedness shall be incurred, when necessary, to construct a sewerage system or procure a water supply for the said city or town, which shall own or control said water supply and devote the revenue derived therefrom to the payment of the debt.

(2) The additional indebtedness authorized, including all indebtedness theretofore contracted, which is unpaid or outstanding, for the construction of a sewerage system, or for the procurement of a water supply, or for both such purposes, shall not exceed in the aggregate ten per centum (10%) over and above the five per centum (5%) heretofore referred to, of the total valuation of the taxable property of the city or town as ascertained by the last assessment for state and county taxes; and, provided further, that the above limit of five per centum (5%) shall not be extended, unless the question shall have been submitted to a vote of the taxpayers affected thereby, and carried in the affirmative by a vote of the majority of said taxpayers who vote upon such question.

(3) It is further provided, that whenever a franchise has been granted to, or a contract made with, any person or persons, corporation or corporations, and such person or persons, corporation or corporations, in pursuance thereof, or otherwise, have established or maintained a system of water supply, or have valuable water rights or a supply of water desired by the city or town for supplying the said city or town with water, the city or town granting such franchise or entering in such contract or desiring such water supply, shall, by the passage of an ordinance, give notice to such person or persons, corporation or corporations, that it desires to purchase the plant and franchise and water supply of such person or persons, corporation or corporations, and it shall have the right to so purchase the said plant or water supply, upon such terms as the parties agree; in case they cannot agree, then the city or town shall proceed to acquire the same under the laws relating to the taking of private property for public use, and any city or town acquiring property under the laws relating to the taking of private property for public use, shall make payment to the owner or owners of the plant or water supply of the value thereof legally determined, within six (6) months from and after final judgment is entered in the condemnation proceedings. For the purpose of providing the city or town with an adequate water supply for municipal and domestic purposes, the city or town council shall procure an appropriate water rights and title to the same, and the necessary real and personal property to make said rights and supply available, by purchase, appropriation, location, condemnation, or otherwise.

(4) Cities and towns shall have jurisdiction and control over the territory occupied by their public works, and over and along the line of reservoirs, streams, trenches, pipes, drains, and other appurtenances used in the construction and operation of such works, and also over the source of stream for which water is taken, for the enforcement of its sanitary ordinances, the abatement of nuisances, and the general preservation of the purity of its water supply, with power to enact all ordinances and regulations necessary to carry the powers hereby conferred into effect. For this purpose the city or town shall be authorized to condemn private property in the manner provided by law, and shall have authority to levy a just

and equitable tax on all consumers of water for the purpose of defraying the expenses of its procurement.

History: En. Subd. 64, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963. See also history of section 11-901.

Application of Section

This section refers only to the contracting of an indebtedness in addition to the "then outstanding indebtedness of the city." Parker v. City of Butte, 58 M 531, 533, 193 P 748.

Charge for Tapping Water Mains

Subdivision (4) of this section empowers the city to establish a flat rate schedule for tapping water mains located entirely within the public right of way, where the labor and materials are furnished by the city. Leischner v. Knight, 135 M 109, 337 P 2d 359.

Extension of Debt Limit

Under this section, there may be no extension, if there is no debt already contracted, for the word "additional" qualifies the character of the debt to be contracted, and refers also to a pre-existing amount of indebtedness to which it may be added. The word "necessary" defines the condition of affairs which requires the additional indebtedness. The condition must be such as to create the necessity. Butler v. Andrus, 35 M 575, 581, 90 P 785; Lepley v. City of Fort Benton, 51 M 551, 555, 154 P 710.

The proviso under which the legislature may authorize an extension of the constitutional limit of three per cent, found in this section, is clear in purpose, to wit, to allow such extension when it is necessary to construct a sewerage system or to procure a water supply. It cannot be granted or made available for any other purpose nor under any other circumstances than those which create the necessity for it. Butler v. Andrus, 35 M 575, 581, 90 P 785; Lepley v. City of Fort Benton, 51 M 551, 555, 154 P 710.

Where the legislature had, by a general law applicable to all municipalities alike, such as that contained in this section, extended the constitutional limit of indebtedness which a city could incur in the procurement of a water supply or the construction of a sewer system, it was not necessary that the question whether the necessity calling for an extension of the limit of indebtedness existed be first submitted to the law-making power, and authority obtained from it through a special act. The determination of such necessity rested with the taxpayers affected by the contemplated improvement. Carlson v. City of Helena, 39 M 82, 98, 102 P 39, explained in 96 M 48, 63, 29 P 2d 667, and distinguished in 246 Fed 370, 374.

It is only for special purposes, to wit, sewerage systems and water supplies, that cities may incur indebtedness in excess of the constitutional limit of three per cent, when authorized by the taxpayers, but the constitutional provision does not limit the amount to which the legislature may authorize the taxpayers to extend the indebtedness. Arnold v. City of Miles City, 46 M 478, 481, 128 P 915.

A city, after having necessarily and legally incurred an outstanding indebtedness for a water supply and a sewer system, under the ten per cent limit, may afterward incur an additional indebtedness of five thousand dollars, under the three per cent limit, for building a bridge, where the existing indebtedness of the city, incurred under the three per cent limit, has fallen below that limit by reason of payments thereon, or on account of the fact that the assessed valuation of taxable property has increased so as to leave a sufficient margin within the three per cent limit. Arnold v. City of Miles City, 46 M 478, 481, 128 P 915.

Authority of a city to incur indebtedness beyond the three per cent limit for the purpose of rendering or maintaining its water supply wholesome and fit for the purpose intended is clearly implied, if not expressly conferred. McClintock v. City of Great Falls, 53 M 221, 226, 163 P 99.

Legislative Intent

In enacting this section, it is apparent that the legislature intended to pursue strictly the provisions of section 6, article XIII of the constitution, with a view of effectuating its object. Butler v. Andrus, 35 M 575, 580, 90 P 785; Carlson v. City of Helena, 39 M 82, 98, 102 P 39; Lepley v. City of Fort Benton, 51 M 551, 555, 154 P 710.

From this section it is clear that it was the intention of the law-making body to compel a city to refrain from becoming indebted for general purposes in excess of three per cent of the value of its taxable property, and that, so long as it keeps within this limit, regard being had to the assessed valuation at the time the indebtedness is proposed to be contracted, it is proceeding according to law. Arnold v. City of Miles City, 46 M 478, 481, 128 P 915.

Methods Provided by Statute Exclusive

Under this section authorizing a city to acquire an electric plant upon credit of the city, by borrowing of money or issuing of bonds, the methods provided by statute are exclusive, and prohibit city from entering into a contract with a construction company for constructing such a plant for a sum payable in monthly installments, with interest at rate of five per cent per annum, solely out of net earnings of the plant (citing chapter 115, Laws 1937 as amended by chapter 111, Laws 1939, apparently now expired). Contract calling for commencement of work ten days after ouster of present company furnishing power, which held a franchise, was unenforceable for lack of "mutuality." Mountain States Power Co. v. City of Forsyth, 41 F Supp 389, 391.

Purpose of Limitation

The purpose of the limitation in matters of indebtedness, contained in this section, is to prevent extravagance, and such provisions should be so construed as to accomplish the desired end so far as possible. Butler v. Andrus, 35 M 575, 580, 90 P 785.

Sidewalks

Under this section, a town council has power to condemn a sidewalk and order a new cement one in its stead, thereby exercising a legislative function, and, except for fraud or abuse of discretion, its action is not subject to judicial review. O'Brien v. Drinkenberg, 41 M 538, 544, 111 P 137.

Special Improvement District Bonds

Where town issued bonds under provisions of Revised Codes 1921, section 5226 (11-2202), providing for the creation of special improvement districts the bonds were payable from the special improvement district fund and town could not be compelled to pay them from the water fund. State ex rel. Truax v. Town of Lima, 121 M 152, 193 P 2d 1008, 1010.

Street Improvements

This section does not authorize the city or town to incur indebtedness or issue bonds to carry out the power granted by section 11-906. Dietrich v. City of Deer Lodge, 124 M 8, 218 P 2d 708, 711.

Validity of Bonds

A city's arbitrary action in placing a bond issue within the extended ten per cent limit of indebtedness authorized, under certain conditions, by this section, when there was sufficient margin within the constitutional three per cent limit to cover it, does not affect the validity of such bonds as a liability of the city. Butler v. Andrus, 35 M 575, 580, 90 P 785.

Where a city had authorized an issue of bonds for sewer purposes which fully exhausted the three per cent constitutional limit, it was without power to subsequently issue further bonds for the construction of a lighting plant by having recourse to the device of classing the first issue within the extended ten per cent limit—which may be resorted to only for the procurement of a sewerage system or a water supply—a large enough margin being thus created within the three per cent limit to accommodate the later issue. Lepley v. City of Fort Benton, 51 M 551, 555, 154 P 710.

As against innocent purchasers of city bonds, the authority on the part of its officers having power to issue them will be implied to extend to the making of recitals therein essential to their validity, i. e., that all conditions precedent to their issuance have been fulfilled; and where they recite that the city council has caused the corporate seal to be affixed to them and the signatures of the mayor and the clerk attached, the city is estopped to contend that they were signed by those officers without authority. Edmunds v. City of Glasgow, 89 M 596, 599, 300 P 203.

Town whch did not submit to taxpayers question whether constitutional debt limit might be exceeded held not liable, on implied contract, to holder of special improvement district bonds for construction of water supply system, where bonds were declared void. Lumbermen's Trust Co. v. Town of Ryegate, 50 F 2d 219.

Water System

In the ownership and control of its water system, a city acts in its proprietary character, as distinguished from its governmental capacity. Helena Consolidated Water Co. v. Steele, 20 M 1, 6, 49 P 382; Public Service Commission v. City of Helena, 52 M 527, 534, 159 P 24.

Water System—Condemnation Proceedings

A city is authorized by this section to acquire, by condemnation proceedings, water rights for the purpose of establishing a water supply system. City of Helena v. Rogan, 26 M 452, 469, 68 P 798.

Water System—Contract for Installation

Town could not lawfully contract for installation of water system in excess of constitutional debt limitation without approval of taxpayers. Lumbermen's Trust Co. v. Town of Ryegate, 50 F 2d 219.

Water System—Manner of Acquisition

This section does not make it incumbent upon a city, when it desires to acquire a water supply of its own, to purchase the system then maintained therein by any person or corporation under a franchise grant-

ed or contract made by the municipality, the course pointed out in the proviso in said section relative to the purchase of the then existing system being obligatory only when the city "desires" to so purchase; if not, it may procure any other available supply. Carlson v. City of Helena, 39 M 82, 98, 102 P 39.

Where a city acquires a water supply without resort to indebtedness beyond the constitutional three per cent of the city's taxable property, it stands on an equal footing with an individual or private corporation engaged in furnishing water to it and its inhabitants, and is subject to all reasonable regulation and control by the state under the police power. Public Service Commission v. City of Helena, 52 M 527, 534, 159 P 24.

A city which as acquired a water supply by resorting to the extended limit of indebtedness is not thereby exempted from control and regulation by the state through the agency of the public service commission. Public Service Commission v. City of Helena, 52 M 527, 538, 159 P 24.

When City Estopped To Claim Funded Debt Invalid

Where a city, after extending the limit of its indebtedness to acquire a water supply and system beyond the three per cent constitutional limit under section 6, article XIII of the constitution to the extent of $25,000, and issued registered warrants aggregating $75,000, without authorization by its voters, then funded the indebtedness by selling bonds to retire the warrants, the bonds reciting that all proper steps had been taken to make them legal obligations of the city, held, that the city was estopped from questioning their validity and refusing further payment after eighteen years by claiming the bonds were invalid on constitutional grounds. Clerihew v. City of Baker, 109 M 317, 320, 96 P 2d 269, distinguished in 121 M 152, 160, 193 P 2d 1008.

References

Montana-Dakota Utilities Co. v. City of Havre, 109 M 164, 172, 94 P 2d 660.

Collateral References

Municipal Corporations⇨858, 863, 864 (1-7); Waters and Water Courses⇨183 (3).

64 C.J.S. Municipal Corporations §§ 1833, 1846, 1848; 94 C.J.S. Waters § 234 et seq.

38 Am. Jur. 85, Municipal Corporations, § 395 et seq.; 43 Am. Jur. 314, 315, Public Securities and Obligations, § 56 et seq.

Negotiability of municipal bonds as affected by reference to funds from which they are to be paid. 42 ALR 1027.

Estoppel by recitals in municipal bonds as to lawfulness of issue. 86 ALR 1057 and 158 ALR 938.

Sale of municipal or other public bonds at less than par or face value. 91 ALR 7 and 162 ALR 396.

Effect of inclusion in call for election, or in proposal for bond issue submitted to people, of unauthroized method of payment or retirement. 93 ALR 362.

Validity of municipal bond issue for purpose of paying employees. 96 ALR 1204.

Effect of delay after authorization by voters on power of governmental unit to issue bonds. 135 ALR 768.

Power of governmental unit to issue bonds as implying power to refund them. 1 ALR 2d 134.

Validity of municipal bond issue as against owners of property annexation of which to municipality became effective after date of election at which issue was approved by voters. 10 ALR 2d 559.

Inclusion of tax exempt property in determining value of taxable property for debt limit purposes. 30 ALR 2d 903.

DECISIONS UNDER FORMER LAW

Unconstitutional

The last clause of this section, which, in the Codes of 1895, declared that no municipality having a water supply furnished by private persons shall erect a water plant to be operated by itself, but that it should purchase or condemn that owned by such private persons was declared unconstitutional. Helena Consolidated Water Co. v. Steele, 20 M 1, 4, 49 P 382; State ex rel. Gerry v. Edwards, 42 M 135, 148, 111 P 734.

11-967. (5039.64) **Sidewalks, foot pavements, curbs and gutters.** The city or town council has power: To regulate and provide for the construction or repair of sidewalks, foot pavements, curbs, gutters, or any combination thereof, and if the owner of any lot fails to comply with the provisions of the ordinance within such time as may be prescribed thereby, the council may contract for the construction and repair of such sidewalks, pavements, curbs, gutters, or any combination thereof, and the city or town may pay for the same, and the amount so paid is a lien upon the

lot, and may be enforced or the amount may be recovered against the owner by a suit before any court of competent jurisdiction.

History: En. Subd. 65, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 1, Ch. 157, L. 1967. See also history of section 11-901.

Sidewalks

An assessment levied in 1908 to pay for the expense incurred by a city in the construction of a sidewalk without first giving the owner of the abutting property notice and affording him an opportunity to construct it himself, as required by the statute and an ordinance of the city then in force, was invalid and constituted no lien on the property. Murray v. City of Helena, 65 M 485, 491, 211 P 197.

Collateral References

Municipal Corporations⇨269 (4).
63 C.J.S. Municipal Corporations § 1048.

11-968. (5039.65) **Granting of railroad rights of way—regulation of railroads—speed—flagmen at street crossings.** The city or town council has power: To grant the right of way through the streets, avenues, and other property of a city or town for the purpose of street or other railroads, and to regulate the running and management of the same, and compel the owner of such street or other railroads to keep the street in repair when occupied by such street or other railroad; to regulate the speed of railroad engines, and to require railroad companies to station flagmen at street crossings.

History: En. Subd. 66, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Right of Way

The use to which a railroad proposed to be constructed in the streets of a city by a mining company was to be put in hauling supplies, ores, etc., to and from the company's mine, as well as supplies, ores, merchandise, etc., which might be offered for carriage by any person or corporation, was a public use. Kipp v. Davis-Daly Copper Co., 41 M 509, 520, 110 P 237.

A railroad proposed to be constructed by a mining company over the streets, and entirely within the limits of a city, for the carriage of supplies, ores, etc., which would otherwise have to be conveyed by teams, is not a "commercial" railroad as distinguished from street railroads; such contemplated use of the city's streets falls within their ordinary uses; and hence no additional servitude is cast upon the owner of abutting real property for which compensation must first be made. Kipp v. Davis-Daly Copper Co., 41 M 509, 520, 110 P 237.

The municipal authorities which have control of streets and highways may use or permit the use of them in any manner or for any prupose reasonably incident to the appropriation of them to public travel. For such changing public uses the owner of abutting property is presumed to have received compensation when the way was created. Kipp v. Davis-Daly Copper Co., 41 M 509, 516, 110 P 237; Smith v. Northern Pacific Ry. Co., 50 M 539, 550, 148 P 393.

This section carries out the plain intent of section 12, article XV of the constitution. Kipp v. Davis-Daly Copper Co., 41 M 509, 516, 110 P 237.

Collateral References

Municipal Corporations⇨680 (6), (7); Railroads⇨243, 245.
64 C.J.S. Municipal Corporations § 1718 et seq.; 74 C.J.S. Railroads §§ 431, 433.

Duty of railroad company to maintain flagman at crossing. 24 ALR 2d 1161.

11-969. (5039.66) **Fire escapes and safety exits.** The city or town council has power: To compel the owner of a building to erect fire escapes and proper exits and entrances when necessary for safety.

History: En. Subd. 67, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Municipal Corporations⇨603.
62 C.J.S. Municipal Corporations § 254.

11-970. (5039.67) **Grading of streets—requirements for change of grade.** The city or town council has power: To establish the grade of any

street, alley, or avenue, and when the grade has been established, it must not be changed except by a vote of the majority of the council, and not then until the damage to property owners, caused by the change of grade, has been assessed and determined by three disinterested appraisers who must be appointed by the mayor and confirmed by the council, who must make an appraisement, taking into consideration the benefits, if any, to the property, and file their report with the clerk within ten days after receiving notice of their appointment, and the amount of damages so assessed must be tendered to the owner or his agent before any change of grade is made.

History: En. Subd. 68, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Grade of Streets

After the grade of a street has once been established, the city, under this section, and 11-2601, may not change it until the damages to abutting property have been determined and tendered to the owner. State ex rel. City of Miles City v. Northern Pacific Ry. Co., 88 M 529, 545, 295 P 257.

Collateral References

Municipal Corporations⇦269 (3).
63 C.J.S. Municipal Corporations §§ 1046, 1047.

11-971. (5039.68) **Sprinkling of streets and public places.** The city or town council has power: To provide for the sprinkling of the streets, alleys, and public places of the city or town, and to fix the rates to defray the cost of said work.

History: En. Subd. 69, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Sprinkling of Streets

In view of statutory provisions relating to the power of cities to provide for the sprinkling, cleaning, etc., of streets, and for the establishment of a board of health, the sprinkling of streets is more naturally referable to the maintenance of its streets — a corporate, not a governmental function—than to the preservation of the public health, and defendant city was properly held liable for injuries inflicted by the negligence of the driver of a sprinkling truck. Griffith v. City of Butte, 72 M 552, 562, 234 P 829.

Collateral References

Municipal Corporations⇦674.
64 C.J.S. Municipal Corporations § 1699.

Liability of municipality for act of employee engaged in sprinkling or cleaning streets or removing garbage or rubbish. 14 ALR 1473; 32 ALR 988; 52 ALR 187 and 60 ALR 101; also 156 ALR 692, 714.

11-972. (5039.69) **Location of steam boilers—signs and awnings—constructions from sidewalks.** The city or town council has power: To regulate the location of steam boilers, the putting up of signs and awnings, and the construction of entrances to basements, cellars, and other floors to buildings from the sidewalks.

History: En. Subd. 70, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Municipal Corporations⇦601 (27), 602; Steam⇦1.
62 C.J.S. Municipal Corporations §§ 221, 227 (3); 82 C.J.S. Steam § 1.

11-973. (5039.70) **Prize fights and boxing matches.** The city or town council has power: To prevent and prohibit prize fights, boxing matches of any kind, with or without gloves, or exhibition of prize fighters, boxers, or sluggers in the city or town, or within five miles thereof.

History: En. Subd. 71, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Theaters and Shows⇨2.
86 C.J.S. Theaters and Shows § 4.

11-974. (5039.71) **Requiring owners to repair dangerously damaged structures.** The city or town council has power: To require the owner of a sidewalk, house, or other structure which is dangerous to passers-by, to repair or remove the same after notice.

History: En. Subd. 72, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Municipal Corporations⇨281 (1).
63 C.J.S. Municipal Corporations § 1070 et seq.

11-975. (5039.72) **Laying of gas, water and other mains.** The city or town council has power: To permit the use of the streets and alleys of the city or town for the purpose of laying down gas, water, and other mains, but no excavations must be made for such purpose without the permission of the council or its authorized officer; and the streets and alleys must be placed in as good condition by the person or corporation making the excavation, as they were before the excavation was made, and the mains laid down, and in default thereof the council may order the same to be done at the expense of such person or corporation.

History: En. Subd. 73, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Excavation in Street

A water company authorized by this section to make an excavation is liable to an individual for injuries received through its negligence in failing in its duty to restore the street to its former safe condition. Robinson v. Mills, 25 M 391, 398, 65 P 115.

Repair of Water Mains

The power of private water companies to sell water to consumers in a city depends upon legislative grant, the granting power having authority to attach conditions to its exercise, and under this section the legislature has delegated authority to cities and towns to grant such companies the right to lay its pipes and mains, imposing upon them the obligation to keep them in repair. Nord v. Butte Water Co., 96 M 311, 338, 30 P 2d 809.

References

City of Baker v. Montana Petroleum Co., 99 M 465, 44 P 2d 735.

Collateral References

Municipal Corporations⇨680 (4).
64 C.J.S. Municipal Corporations § 1716 et seq.

11-976. (5039.73) **Public grounds.** The city or town council has power: To provide for inclosing, improving, and regulating all public grounds belonging to the city or town.

History: En. Subd. 74, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Municipal Corporations⇨721 (1).
64 C.J.S. Municipal Corporations § 1818 et seq.

11-977. (5039.74) **Power of condemnation.** The city or town council has power: To condemn private property for opening, establishing, widening, or altering any streets, alley, park, sewer or waterway in the city or town, and for establishing, constructing and maintaining any sewer, waterway or drain ditch outside of the corporate limits of the municipality, or for any other municipal and public use, and the ordinance authorizing the taking of private property for any such use is conclusive as to the neces-

sity of the taking, and must conform to and the proceedings thereunder had as provided in Title 93 concerning eminent domain.

History: En. Subd. 75, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 1, Ch. 180, L. 1937. See also history of section 11-901.

Cross-References

Airports, sec. 1-810.

Eminent domain, secs. 93-9901 to 93-9926.

Control of Flood Waters

Under this section a city may condemn lands for constructing a sewer, waterway or drain ditch outside the corporate limits of the municipality "or for any other municipal and public use," and under it it has the power of eminent domain where the purpose of the project is to divert flood waters into a channel away from the city in order to protect it from overflows. Hansen v. City of Havre, 112 M 207, 214, 114 P 2d 1053.

Right To Condemn Property

Authority to condemn property for a public use must be clearly expressed in the law before such right will be allowed. State ex rel. McLeod v. District Court, 67 M 164, 169, 215 P 240.

In the absence of legislative authority empowering it so to do, a city has no right to condemn land outside of its corporate limits for a public highway leading to a park owned by it. State ex rel. McLeod v. District Court, 67 M 164, 169, 215 P 240.

Vesting of Fee to Land

Under section 11-606, the fee to the land covered by a street once established is vested in the public; for the form of dedication required of the owner, when the plat of a city or town or an addition thereto is recorded, is equivalent to a deed; but, as the respective rights of the abutting owners and of the public are dependent upon the fact of dedication, it is not important to inquire where the fee is vested. Kipp v. Davis-Daly Copper Co., 41 M 509, 516, 110 P 237.

Water Supply

In condemnation proceedings to acquire title to property for a water supply, it is not necessary to allege or prove that the city had endeavored to obtain the consent of the owners of the property to the taking thereof. City of Helena v. Rogan, 27 M 135, 137, 69 P 709.

Collateral References

Eminent Domain⇨19, 28, 32, 41.

29 C.J.S. Eminent Domain §§ 33-35, 45, 46, 54, 63.

26 Am. Jur. 2d 657, Eminent Domain, § 17 et seq.

11-978. (5039.75) **Appropriation of money and payment of debts and expenses.** The city or town council has power: To appropriate money, and provide for the payment of the debt and expenses of the city or town, and also the debt of the municipal corporation of which it is the successor.

History: En. Subd. 76, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Municipal Corporations⇨36 (3), 858.

62 C.J.S. Municipal Corporations § 78; 64 C.J.S. Municipal Corporations § 1833.

11-979. (5039.76) **Census may be taken.** The city or town council has power: To take a census of the inhabitants of a city or town at any time.

History: En. Subd. 77, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Census⇨9.

14 C.J.S. Census §§ 2, 4-8.

11-980. (5039.77) **Printing contract.** The city or town council has power: To provide for the city or town printing, the contract for which must be let annually to the lowest bidder.

History: En. Subd. 78, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Municipal Corporations⇨230.

63 C.J.S. Municipal Corporations § 982 et seq.

11-981. (5039.78) **Securing water supply.** The city or town council has power: To adopt, enter into, and carry out means for securing a supply of water for the use of a city or town or its inhabitants.

History: En. Subd. 79, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

References

Leischner v. Knight, 135 M 109, 337 P 2d 359, 361.

Collateral References

Municipal Corporations⇐271.
63 C.J.S. Municipal Corporations § 1051.

11-982. (5039.79) **Creation of special improvement districts—assessments—expenses payable in warrants—interest on warrants.** The city or town council has power: To create special improvements districts, designating the same by number; to extend the time for payment of assessments levied upon such districts for the improvements thereon for a period not exceeding twenty years; to make such assessments payable in installments, and to pay all expenses of whatever character incurred in making such improvements with special improvement warrants, which warrants shall bear interest at a rate not to exceed six per centum per annum.

History: En. Subd. 80, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Construction of Section

The provisions of this section were not repealed by implication by section 11-2201 et seq., relating to special improvements in cities and towns. Shapard v. City of Missoula, 49 M 269, 275, 141 P 544.

Collateral References

Municipal Corporations⇐450 (1), 451.
63 C.J.S. Municipal Corporations §§ 1359 et seq., 1392 et seq.

11-983. (5039.80) **Hats and bonnets in theaters and public amusement places.** The city or town council has power: To regulate and prohibit the wearing of hats or bonnets at theaters or public places of amusement.

History: En. Subd. 81, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Collateral References

Theaters and Shows⇐2.
86 C.J.S. Theaters and Shows § 4.

11-984. (5039.81) **Ditches, drains and flumes in city or town.** The city or town council has power: To regulate the use and construction of irrigating ditches, drains, and flumes within or running through any city or town.

History: En. Subd. 82, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Cross-Reference

Powers of governing body to regulate open ditches for safety purposes, 11-4001 et seq.

Collateral References

Waters and Water Courses⇐217.
94 C.J.S. Waters § 315.

11-985. (5039.82) **Noxious weed extermination—tax.** The city or town council has power: To declare and determine what vegetation within the city or town shall be noxious weeds, and to provide the manner in which they shall be exterminated, and to require the owner or owners of any property, within said city or town to exterminate or remove noxious weeds from their premises, and the one-half of any road or street lying

next to the lands or boulevard abutting thereon, and to provide, in the event the owner or owners of any of said premises neglect to exterminate or remove the noxious weeds therefrom, for levying the cost of such extermination or removal as a special tax against the property.

History: En. Subd. 83, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of section 11-901.

Cross-Reference

Weed control, secs. 16-1701 to 16-1721.

Collateral References

Municipal Corporations⇐605.

62 C.J.S. Municipal Corporations §§ 279, 281.

37 Am. Jur. 942, Municipal Corporations, § 296.

11-986. (5039.83) **Acquisition of landing fields and parking areas—jurisdiction.** The city or town council has power: To acquire by lease, gift, purchase or condemnation lots or lands for landing fields or parking areas for aircraft, within or without the corporate limits of the municipality, and to acquire by lease, gift, or purchase lots or lands for parking areas for automobiles within the corporate limits of the municipality, and to exercise municipal jurisdiction over the lots or lands where such lots or lands, or any portion thereof, are without the corporate limits of the municipality, to the same extent as though they were within such corporate limits.

History: En. Subd. 84, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 1, Ch. 147, L. 1947; amd. Sec. 1, Ch. 27, L. 1965. See also history of section 11-901.

Cross-Reference

Establishment and control of airports, sec. 1-801 et seq.

References

Dietrich v. City of Deer Lodge, 124 M 8, 218 P 2d 708, 711.

Collateral References

Municipal Corporations⇐57, 223, 267, 273½, 277.

63 C.J.S. Municipal Corporations §§ 959, 1054, 1058.

8 Am. Jur. 2d 670, Aviation, § 51 et seq.

Right to use park property for airport. 63 ALR 484, 491 and 144 ALR 486.

Power of municipality to acquire airport. 69 ALR 316, 325; 83 ALR 333 and 99 ALR 173.

Power to establish or maintain public airport, or to create separate public airport authority. 161 ALR 733.

Zoning regulations as affecting airports and airport sites. 161 ALR 1232.

Municipal establishment or operation of off-street public parking facilities. 8 ALR 2d 373.

11-987. (5039.84) **Power to license and regulate soft drink establishments and pool and billiard halls.** In addition to the other powers vested in city governments the city or town council of any city or town shall have power to make and pass necessary ordinances providing for the licensing and regulation of soft drink establishments and all pool and billiard halls; said city and town council shall have power to regulate and limit the number of such licenses issued and to provide by ordinance that the total number of such licenses may not exceed the number fixed by the city or town council by ordinance.

History: En. Sec. 1, Ch. 136, L. 1923.

References

State ex rel. City of Libby v. Haswell, 147 M 492, 414 P 2d 652.

Collateral References

Food⇐3; Theaters and Shows⇐3.

36A C.J.S. Food § 12; 86 C.J.S. Theaters and Shows § 18 et seq.

11-988. (5039.85) **Power of cities and towns to acquire natural gas and distributing system therefor.** The city or town council has power

to contract an indebtedness of a city or town upon the credit thereof by borrowing money or issuing bonds for the construction, purchase or development of an adequate supply of natural gas, and to construct or purchase a system of gas lines for the distribution thereof to the inhabitants of said city or town or vicinity; provided, that the total amount of indebtedness authorized to be contracted in any form, including the then existing indebtedness must not at any time exceed three per centum (3%) of the total assessed valuation of the taxable property of the city or town as ascertained by the last assessment for state and county taxes, and provided further, that no money must be borrowed or bonds issued for the purposes herein specified until the proposition has been submitted to the vote of the taxpayers affected thereby of the city or town, and the majority vote cast in favor thereof.

History: En. Sec. 1, Ch. 128, L. 1927.

References

Dietrich v. City of Deer Lodge, 124 M 8, 218 P 2d 708, 710.

Collateral References

Municipal Corporations⇐864 (2), 867 (2).

64 C.J.S. Municipal Corporations §§ 1847 et seq., 1859 et seq.

38 Am. Jur. 246, Municipal Corporations, § 559 et seq.

Proposition submitted to people with reference to erection or purchase of plant or other public utility as single or double proposition. 5 ALR 538.

11-989. (5040) **Inspection and measurement of gas and electricity.** The council of any incorporated city or town shall have power, by ordinance, to provide for and regulate the inspection and the measurement of gas, electric, or other light, and electric or other power, sold within its limits or brought into or carried through any such city or town.

History: En. Sec. 1, Ch. 57, L. 1907; Sec. 3260, Rev. C. 1907; re-en. Sec. 5040, R. C. M. 1921.

Collateral References

Gas⇐2; Municipal Corporations⇐272.

38 C.J.S. Gas §§ 3, 6.

CHAPTER 10

POWERS OF CITY AND TOWN COUNCILS (continued)

Section 11-1001. Authorization of cities and towns to furnish water to industries and to persons without city limits—rates—penalty for violations.
11-1002. Regulation of motor vehicles and their speed.
11-1003. "Motor vehicles" defined.
11-1004. Organized cities and towns authorized to take by gift, donation, devise, etc.
11-1005. Who may make gift, donation, or grant—property included therein—how used and administered.
11-1006. Public bodies' and institutions' authority to receive property by gifts.
11-1007. Applicable provisions.
11-1008. Public baths.
11-1009. Power to maintain and regulate.
11-1010. Certain cities may provide public band concerts.
11-1011. Tax levy for band concerts.
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11-1015. Parking meters in cities or towns of 2,500 population or less.
11-1016. Referendum on parking meters required before ordinance.
11-1017. Existing meters and ordinances unaffected.

11-1018. Acquisition, construction and maintenance of parking areas—bond issues.
11-1019. Operation of bus lines—contracting indebtedness.
11-1020. Operation subject to Motor Carrier Act—exception.
11-1021. Contracts or lease arrangements with independent carriers of passengers—when authorized—levy of tax.
11-1022. Bids for service—operation of carriers.
11-1023. Contracting with highway commission and/or federal agencies regarding construction or reconstruction of highways, streets, and roads.
11-1024. Group insurance for all departments, bureaus, boards, commissions and agencies of the state of Montana, county, city, and town officers and employees—authority—approval of employees—limit on contributions.

11-1001. (5040.1) **Authorization of cities and towns to furnish water to industries and to persons without city limits—rates—penalty for violations.** (1) The city or town council of any city or town within the state of Montana, that owns and operates a municipal water system, to furnish water to the inhabitants of such city or town, as a public utility, shall, in addition to all other powers, have power to furnish water from such water system, to any person, factory, or other industry, located within the corporate limits of such city or town, or to any person, factory or other industry located outside the corporate limits of such city or town, at reasonable rates filed by the city or town council and approved by the public service commission [provided that delivery of water by any such city or town] to or for the use of any person, factory or other industry located outside the corporate limits of such city or town shall be made within, or at the boundary line of the corporate limits of such city or town, or from any existing water line of such city or town located outside of the corporate limits of such city or town, except as hereinafter provided.

(2) The city council of any city within the state of Montana that owns and operates a municipal water system to furnish water to the inhabitants of such city, as a public utility, shall, in addition to all other powers, have power to furnish water from such water system to the inhabitants or to any person, factory, industry or producer of farm or other products located outside of the corporate limits of such city, at reasonable rates filed by the city or town council and approved by the public service commission, and such city council is further empowered to make collections for furnishing water in the same manner as collections are made within the corporate limits.

(3) Any person, firm or corporation residing either inside or outside of the corporate limits of a city owning a municipal water system which furnishes water as a public utility, who shall willfully turn on the water after the same shall have been shut off by or under the direction of the said city for nonpayment of water charges, or who shall unlawfully take water from such water system shall be guilty of a misdemeanor.

History: En. Sec. 1, Ch. 71, L. 1925; amd. Sec. 1, Ch. 134, L. 1929; amd. Sec. 1, Ch. 6, L. 1955; amd. Sec. 1, Ch. 63, L. 1957; amd. Sec. 1, Ch. 194, L. 1961.

Compiler's Note

The compiler has inserted the bracketed words in subd. (1).

Duty of City

A municipality cannot be forced to construct mains beyond its corporate limits solely because it is operating a public utility in the shape of a municipal water system. Crawford v. City of Billings, 130 M 158, 297 P 2d 292, 295.

Collateral References

Waters and Water Courses⇐201.
94 C.J.S. Waters §§ 277-279.

11-1002. (5041) **Regulation of motor vehicles and their speed.** The council of any incorporated city or town shall have power, by ordinance, to regulate motor vehicles and their speed within the limits of such city or town, and to prescribe and enforce fines and penalties for violation of such regulations.

History: En. Sec. 1, Ch. 49, L. 1917; re-en. Sec. 5041, R. C. M. 1921.

Cross-References

Altering of speed limits, sec. 32-2146.
Parking regulation, sec. 32-21-102.
Persons driving under influence of intoxicating liquor or narcotic drugs, ordinances, secs. 32-2131, 32-2142.
Powers of local authorities, secs. 32-2130, 32-2131.
Reckless driving, ordinances, sec. 32-2143.
Unincorporated towns and villages, county commissioners to regulate parking, sec. 16-1002.

Ordinance Covering Same Subject as State Law

Since state traffic laws in effect in 1951 covered offenses both within and without municipalities, a city ordinance prohibiting drunken driving and providing a penalty therefor would be void. A municipal ordinance punishing an act made penal by a state law then existing, covering the same subject matter, must yield to the state law. City of Billings v. Herold, 130 M 138, 296 P 2d 263, 271. (Dissenting opinion, 130 M 138, 296 P 2d 263, 271.)

Collateral References

Automobiles⇐5 (1).
60 C.J.S. Motor Vehicles § 29.
7 Am. Jur. 2d, Automobiles, p. 741, § 191; p. 748, § 197.

Conflict between statutes and local regulations. 21 ALR 1186; 64 ALR 993 and 147 ALR 522.
Delegation of legislative power to regulate speed. 87 ALR 546, 554.

11-1003. (5042) **"Motor vehicles" defined.** The term "motor vehicles," as used in this act, except where otherwise expressly provided, shall include all vehicles propelled by any power other than muscular power, except traction-engines, road-rollers, fire wagons and engines, fire department vehicles, and police patrol-wagons.

History: En. Sec. 2, Ch. 49, L. 1917; re-en. Sec. 5042, R. C. M. 1921.

Collateral References

Automobiles⇐1.
60 C.J.S. Motor Vehicles §§ 1-8.

11-1004. (5043) **Organized cities and towns authorized to take by gift, donation, devise, etc.** Any city or town organized under the laws of the state of Montana is hereby empowered and given the right to accept, receive, take, hold, own, and possess any gift, donation, grant, devise, or bequest, or any property, real, personal, or mixed, or any improved or unimproved park or playground, or any water or water right, water reservoir or watershed, or any timberland or any reserve, or any fish or game reserve in any part of the state, and the right to own, hold, work, and improve the same; and said gifts, donations, grants, bequests, or devises made to any officer or board of any such city or town shall be considered a gift, donation, grant, bequest, or devise made for the use and benefit of any such city or town, and shall be administered and used, by such city or town for the particular purpose for which the same was given, donated, granted, bequeathed, or devised.

History: En. Sec. 1, Ch. 10, L. 1917; re-en. Sec. 5043, R. C. M. 1921.

Acceptance of Trust

Where at the time of the death of a testator who bequeathed property to a town for library purposes the law did not provide a method by which the municipality could accept the donation, but later, after the estate had been distributed and the decree of distribution had become final by failure of appeal therefrom and the trust created thereby became effective, the legislature enacted a statute under which a town could accept, the trust was not subject to attack on the ground of the town's former incapacity to accept. Town of Cascade v. County of Cascade, 75 M 304, 311, 243 P 806.

Construction of Section

This section conferring the right upon cities to accept by gift, deed or devise land for a public park, does not by implication clothe it with power to condemn land for a public road leading thereto. State ex rel. McLeod v. District Court, 67 M 164, 169, 215 P 240.

Grantor May Remove Restrictions by Waiver

Lands deeded to a city for park purposes by deeds providing for reversion to the grantors if used for any other purpose, may be used for some other purpose upon obtaining waiver, quitclaim deed or unconditional deed, from the owner of the reversionary interest, removing the restriction, whereupon the city will own the fee and use the property as it sees fit. Lloyd v. City of Great Falls, 107 M 442, 447, 86 P 2d 395.

Inapplicable to Grants Made Prior to Statute

In an action to enjoin a city from erecting a civic center building on land granted to it in 1889 and 1909 for park purposes by deeds providing for reversion to the grantors or their assigns if used for any other purpose, held, that this section and section 11-1005, were inapplicable to the case because not in existence when the land in question was granted to the city. Section 325, 5th Div. Comp. Stat. 1887 as amended in 1907, in effect at the time of the dedications applied. Lloyd v. City of Great Falls, 107 M 442, 446, 86 P 2d 395, distinguished in 117 M 126, 138, 157 P 2d 1013.

Lease to Private Club

Where property was conveyed to city in trust for use for park, recreational ground and golf course purposes, a part of it could not be leased to private club so as to interfere with the public's use of the property. Hames v. City of Polson, 123 M 469, 215 P 2d 950.

Collateral References

Municipal Corporations⇐224; Towns⇐35 (1).

63 C.J.S. Municipal Corporations § 957; 87 C.J.S. Towns § 92.

11-1005. (5044) **Who may make gift, donation, or grant—property included therein—how used and administered.** Any donation, gift, or grant may be made by any person, company, copartnership, or corporation to any city or town organized under the laws of the state of Montana, of any property, real, personal, or mixed, or any improved or unimproved park or playground, or any water or water right, water reservoir or watershed, or any timberland or reserve, or any fish or game reserve in any part of the state of Montana, to be held for the use and benefit of said city or town; and any person over the age of eighteen years and of sound mind and discretion may make any gift, grant, donation, or testamentary disposition of property, real, personal, or mixed, or any improved or unimproved park or playground, or water or water right, water reservoir or watershed, or timberland or reserve, or any fish or game reserve in any part of the state, to any city or town organized under the laws of the state of Montana; but in the event that any gift, donation, grant, devise, or bequest shall be made to any such city or town, or to any officer or board of such city or town, the same shall be construed as a gift, donation, grant, devise, or bequest to such city or town, and shall be administered and used for such city or town, and for the particular purpose for which the same was given, donated, granted, bequeathed, or devised. And in the event no particular purpose is mentioned in such gift, donation, grant, devise, or

bequest, then the same shall be used for the general support, maintenance, or improvement of any such city or town.

History: En. Sec. 2, Ch. 10, L. 1917; re-en. Sec. 5044, R. C. M. 1921.

Inapplicable to Grants Made Prior to Statute

In an action to enjoin a city from erecting a civic center building on land granted to it in 1889 and 1909 for park purposes by deeds providing for reversion to the grantors or their assigns if used for any other purpose, held, that this section and section 11-1004 were inapplicable to the case because not in existence when the land in question was granted to the city. Section 325, 5th Div. Comp. Stat. 1887, as amended in 1907, in effect at the time of the dedications, applied. Lloyd v. City of Great Falls, 107 M 442, 446, 86 P 2d 395.

Lease to Private Club

Where property was conveyed to city in trust for use for park, recreational ground and golf course purposes, a part of it could not be leased to private club so as to interfere with the public's use of the property. Hames v. City of Polson, 123 M 469, 215 P 2d 950.

References

Town of Cascade v. County of Cascade, 75 M 304, 312, 243 P 806.

11-1006. (5668.17) **Public bodies' and institutions' authority to receive property by gifts.** All counties, all school districts, and all public libraries, hospitals, cemeteries and other public institutions are hereby granted the power and authority to accept, receive, take, hold and possess any gift, donation, grant, devise or bequest of property, real or personal and the right to own, hold, work and improve the same.

History: En. Sec. 1, Ch. 47, L. 1927.

11-1007. (5668.18) **Applicable provisions.** The provisions of sections 11-1004 and 11-1005, are hereby made expressly applicable to gifts, donations, grants, devises and bequests of real or personal property to officers and boards of the public corporations and institutions mentioned in the preceding section of this act.

History: En. Sec. 2, Ch. 47, L. 1927.

11-1008. (5045) **Public baths.** All cities or towns incorporated under the laws of the state of Montana, in addition to other powers conferred upon them, are hereby empowered and authorized to establish and maintain a public bathing place within said city or town, and to defray the cost and expense of maintaining said public bathing place, said city or town is hereby authorized and empowered to contract an indebtedness, upon behalf of said city or town, upon the credit thereof, by borrowing money or issuing bonds; provided, that no money may be borrowed, and no bonds may be issued for said purpose, until the proposition has been submitted to the vote of the taxpayers affected thereby of the city or town, and a majority vote be cast therefor.

History: En. Sec. 1, Ch. 12, L. 1905; re-en. Sec. 3294, Rev. C. 1907; re-en. Sec. 5045, R. C. M. 1921.

Collateral References

Municipal Corporations⇨276.
63 C.J.S. Municipal Corporations § 1057.

References

Dietrich v. City of Deer Lodge, 124 M 8, 218 P 2d 708, 710.

11-1009. (5046) **Power to maintain and regulate.** Power is hereby granted to the city or town council of all cities and towns incorporated under the laws of the state of Montana to make and pass all bylaws, ordi-

nances, resolutions, and orders necessary for the establishment, maintenance, and regulation of a public bathing place within said city or town, including the power to establish by ordinance a reasonable and uniform charge for the privilege of using said bathing place.

History: En. Sec. 2, Ch. 12, L. 1905; re-en. Sec. 3295, Rev. C. 1907; re-en. Sec. 5046, R. C. M. 1921.

Collateral References

Municipal Corporations⇐276.
63 C.J.S. Municipal Corporations § 1057.

11-1010. (5047) **Certain cities may provide public band concerts.** Cities of the first, second and third class, as defined by the laws of the state of Montana, and incorporated towns may, at their discretion, provide public band concerts for the entertainment of their people, and to pay therefor out of any moneys in a fund to be provided in accordance with the provisions of the next section, said band concerts and entertainments to be given at a place or places and at a time or times to be designated by the city council; provided, however, that said band concerts shall be given not more than twice each week; provided, further, that no band shall be employed in connection with the giving of said band concerts, except one having its headquarters in the said city or town in which said band concert is given.

History: En. Sec. 1, Ch. 23, L. 1917; amd. Sec. 1, Ch. 167, L. 1921; re-en. Sec. 5047, R. C. M. 1921.

Collateral References

Municipal Corporation⇐276; Theaters and Shows⇐1.
63 C.J.S. Municipal Corporations § 1057; 86 C.J.S. Theaters and Shows § 3.

11-1011. (5048) **Tax levy for band concerts.** For the purpose of providing band concerts as in this act provided, the council or other governing body in any town or city of the first, second or third class, or any incorporated town, may assess and levy, in addition to the levy for general municipal or administrative purposes, not exceeding one mill on the dollar on the assessed value of the taxable property of the said city or town.

History: En. Sec. 2, Ch. 167, L. 1921; re-en. Sec. 5048, R. C. M. 1921.

Collateral References

Municipal Corporations⇐962.
64 C.J.S. Municipal Corporations § 1995.

11-1012. (5052) **What constitutes a quorum.** A majority of the members of the council constitute a quorum for the transaction of business, but a less number may meet and adjourn to any time stated, and may compel the attendance of absent members, under such rules and penalties as the council may prescribe.

History: En. Sec. 4801, Pol. C. 1895; re-en. Sec. 3261, Rev. C. 1907; re-en. Sec. 5052, R.C.M. 1921. Cal. Pol. C. Sec. 4406.

Collateral References

Municipal Corporations⇐90.
62 C.J.S. Municipal Corporations § 399.

11-1013. (5053) **Council may prescribe rules.** The council may determine the rules of its proceedings, punish its members for improper conduct, and expel any member for the same by a two-thirds vote of the members elected, and must cause to be kept a journal of the proceedings, which must be open to inspection.

History: En. Sec. 4802, Pol. C. 1895; re-en. Sec. 3262, Rev. C. 1907; re-en. Sec. 5053, R. C. M. 1921. Cal. Pol. C. Sec. 4407.

Collateral References

Municipal Corporations⇐92.
62 C.J.S. Municipal Corporations § 400.

11-1014. (5054) **Ayes and noes must be called, and a majority elects.** The ayes and noes must be called and recorded on the final passage of any ordinance, bylaw, or resolution, or making any contract, and the voting on the election or appointment of any officer must be viva voce, and a majority of the whole number of the members elected is requisite to appoint or elect an officer, and such vote must be recorded.

History: Ap. p. Secs. 333-337-347, 5th Div. Comp. Stat. 1887; amd. Secs. 2 and 6, pp. 122, 126, L. 1893; amd. Sec. 4803, Pol. C. 1895; re-en. Sec. 3263, Rev. C. 1907; re-en. Sec. 5054, R. C. M. 1921.

Application of Section

This section does not apply to an election by a city council to fill a vacancy in its own body, caused by resignation or death; the provisions governing such election are found in section 11-721. State ex rel. Wilson v. Willis, 47 M 548, 551, 133 P 962, distinguished in 92 M 307, 311, 14 P 2d 432.

Failure To Record

Town could not deny the validity of a sewage project contract due to an alleged technical defect in failing to record in minutes of town council the aye and noe vote on the approval of the contract as required by this section where the town in all of its affirmative acts recognized the contract. State Engineering Service, Inc. v. Town of Kevin, 148 M 312, 420 P 2d 433, 435.

References

O'Brien v. Drinkenberg, 41 M 538, 544, 111 P 137; State ex rel. O'Hern v. Loud, 92 M 307, 308, 14 P 2d 432; Dimich v. Northern Pacific Ry. Co., 136 M 485, 348 P 2d 786, 793.

Collateral References

Municipal Corporations⚖96, 97.
62 C.J.S. Municipal Corporations §§ 403, 404.

11-1015. Parking meters in cities or towns of 2,500 population or less. Any city or town council of any incorporated city or town of twenty-five hundred (2500) population or less is hereby empowered to enact an ordinance or ordinances:

(a) To purchase, rent, lease or otherwise acquire coin operating parking meters, or other devices, or instruments used for the purpose of measuring the duration of time an automobile or other vehicle is parked.

(b) To install, maintain and operate said meters, devices or instruments at or near any public street, highway, avenue or other public place within the corporate limits of such city or town.

(c) To provide for such regulations as necessary to govern the use of its public streets, highways, avenues or other public places for the purpose of parking automobiles or other vehicles, and the use of said meters, devices or instruments in conjunction therewith, including the establishment and designation of zones or areas where said meters, devices or instruments are to be used.

History: En. Sec. 1, Ch. 91, L. 1949.

Cross-Reference

Parking meter revenues used for off-street parking facilites, sec. 11-3712.

Collateral References

Automobiles⚖5 (3), 6, 7, 12.
60 C.J.S. Motor Vehicles § 28.

Governmental immunity as affecting tort liability for alleged nuisance by installation or operation of parking meters. 33 ALR 2d 764.

11-1016. Referendum or parking meters required before ordinance. Provided, however, that no ordinance or ordinances providing for the purchasing, renting, leasing or otherwise acquiring or installing, maintaining, operating or using such parking meters, devices or instruments shall be enacted until and unless the question of whether or not such ordinance

or ordinances shall be enacted has been submitted to the qualified electors of such city or town at a general election or special election called for that purpose, and unless at such election a majority of the votes cast for and against the question shall have been in favor of the enacting of said ordinance or ordinances.

History: En. Sec. 2, Ch. 91, L. 1949.

Collateral References

Municipal Corporations⇐108.6.
62 C.J.S. Municipal Corporations § 454.

11-1017. Existing meters and ordinances unaffected. Nothing herein contained shall affect the validity of any ordinance relating to parking meters or similar devices or instruments heretofore adopted by any city or town, or any extension thereof hereafter made.

History: En. Sec. 3, Ch. 91, L. 1949.

Collateral References

Automobiles⇐5 (3).
60 C.J.S. Motor Vehicles § 28.

11-1018. Acquisition, construction and maintenance of parking areas —bond issues. A city or town council shall have power to acquire by lease, gift, purchase or condemnation lots or lands for use as parking areas for motor vehicles, and to construct and maintain thereon or on any premises owned or under lease by such city or town suitable parking facilities for the use of the public and for general traffic control, and to make charges for the use of such facilities; and for the payment of such lots or lands and facilities to issue bonds or other securities payable in whole or in part from the revenues of any such parking lots or areas or parking facilities or from other sources, and to pledge, place a charge upon, or otherwise make available as additional security for the payment of such bonds or securities, any or all revenues from any or all street parking meters owned or to be owned and controlled by said city or town.

History: En. Sec. 1, Ch. 96, L. 1951.

Collateral References

Municipal Corporations⇐223, 861.
63 C.J.S. Municipal Corporations § 959; 64 C.J.S. Municipal Corporations § 1845.

Cross-Reference

Off-street parking facilities, secs. 11-3701 to 11-3725.

11-1019. Operation of bus lines—contracting indebtedness. Whenever a city or town is not being served by a bus company or operator, operating on a regular schedule, and under the jurisdiction of the Montana railroad and public service commission or if such service is to be or is likely to be discontinued in the immediate future, the city or town council of any incorporated city or town shall have the power to contract an indebtedness of any such city or town upon the credit thereof by borrowing money or issuing bonds for the purchase, development, operation or leasing of motor buses and bus lines for the transportation of passengers within the corporate limits of such cities and towns, and to operate the same to any point or points beyond said limits not exceed eight (8) miles, measured along the route of said bus line; provided that the total amount of indebtedness authorized to be contracted in any form, including the then existing indebtedness must not at any time exceed five per centum (5%) of the total assessed valuation of the taxable property of the

city or town as ascertained by the last assessment for state and county taxes, and provided further, that no money must be borrowed or bonds issued for the purposes herein specified until the proposition has been submitted to the vote of the taxpayers affected thereby of the city or town, and the majority vote cast in favor thereof.

History: En. Sec. 1, Ch. 101, L. 1951; amd. Sec. 1, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957.

Collateral References

Municipal Corporations⇨861.
64 C.J.S. Municipal Corporations § 1845.

11-1020. Operation subject to Motor Carrier Act—exception. The said city or town council or commission shall have authority to provide for the management and operation of said system; and to do all things necessary for the successful operation of said transportation system. Such operations shall be subject to all the provisions of the Motor Carrier Act (sections 8-101 to 8-129) except that such municipality may be issued a certificate of public convenience and necessity without proof of the existence of public convenience and necessity, and except that the municipality shall be exempt from the payment of fees provided by sections 8-116 and 8-127.

History: En. Sec. 2, Ch. 101, L. 1951; amd. Sec. 1, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957.

Compiler's Note

Sections 8-104 and 8-106, contained in the reference in this section to sections 8-101 to 8-129, were repealed by Sec. 7, Ch. 201, Laws 1961.

Collateral References

Municipal Corporations⇨861.
64 C.J.S. Municipal Corporations § 1845.

11-1021. Contracts or lease arrangements with independent carriers of passengers—when authorized—levy of tax. Whenever a city or town is not being served by a bus company or operator, operating on a regular schedule, and under the jurisdiction of the Montana railroad and public service commission or if such service is to be, or is likely to be, discontinued in the immediate future, the city or town council of any incorporated city or town shall have the power to enter into a contract or contracts, or to enter into a lease or a lease and operating agreement, with an independent carrier or independent carriers for the transportation of passengers by bus within the corporate limits of such city or town and to and from any point or points beyond said limits not to exceed eight (8) miles measured along the route of said bus line or lines; and for the purpose of raising the necessary moneys to defray the cost of such transportation service pursuant to such contract or contracts, lease or lease and operating agreement, with such independent carrier or carriers the city or town council shall have power to annually levy a tax on the taxable value of all taxable property within the limits of such city or town; provided, however, that whenever the council of such city or town shall deem it necessary to raise money by taxation for such purpose in excess of the levy now allowed by law the council of such city or town shall in the manner prescribed by law, submit the question of such additional levy to the legal voters of such city or town who are taxpaying freeholders therein, either at the regular annual election held in said city or town, or at a special election called for that purpose by the council of such city or

town; provided, however, that such additional levy in excess of the levy now allowed by law shall not exceed one and one-half (1½) mills.

History: En. Sec. 3, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957.

Collateral References
Municipal Corporations⇐961.
64 C.J.S. Municipal Corporations § 1992.

11-1022. Bids for service—operation of carriers. The said city or town council shall have power and authority to call for bids from independent carriers for such transportation service, and to do all things necessary or proper for establishment and maintenance of such transportation service by contract, lease or lease and operating agreement.

History: En. Sec. 4, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957.

Collateral References
Municipal Corporations⇐235-242, 245.
63 C.J.S. Municipal Corporations § 995.

11-1023. Contracting with highway commission and/or federal agencies regarding construction or reconstruction of highways, streets, and roads. The city council, commission or other governing body of any city or town may, whenever highway construction work is to be financed in whole or in part by federal funds, enter into and contract jointly or independently with the Montana state highway commission, United States bureau of public roads, and/or any other federal agency heretofore established or which may be hereafter established, for the construction or reconstruction of highways, roads and streets, to acquire rights of way, and do any other thing essential and practical in securing such highway, road and street construction or reconstruction or such rights of way as may be agreed upon between such city council, commission or other governing body and the state highway commission or federal agency. All contracts for work on highways, roads and streets which shall be let pursuant to the authority herein granted, shall be let by the Montana state highway commission.

History: En. Sec. 1, Ch. 69, L. 1957.

11-1024. Group insurance for all departments, bureaus, boards, commissions and agencies of the state of Montana, county, city, and town officers and employees—authority—approval of employees—limit on contributions. All departments, bureaus, boards, commissions and agencies of the state of Montana, and all counties, cities, and towns are hereby authorized upon approval by two-thirds (2/3) vote of the officers and employees of each such department, bureau, board, commission, agency, county, city and town, to enter into group hospitalization, medical, health, accident and/or group life insurance contracts or plans for the benefit of their officers, employees, and their dependents, and the respective administrative and governing bodies are authorized to pay as part of the officers and employees salary one-half (½) of the total premium therefor; provided, however, that such payment shall not exceed seven dollars and fifty cents ($7.50) per month for each officer and employee; and further provided that any such premiums shall not be line itemed as group insurance premiums in any budgets for any state of Montana departments or their subdivisions, and all premiums necessary to pay the cost of such

group insurance programs as herein allowed shall be negotiated with the employees or their representatives, and when approved, the total cost necessary to fund such program, within the $7.50 recommendation, shall be taken from any salaries or salary raises of those employees to be covered and as provided for in any budget for any year of any biennium.

History: En. Sec. 1, Ch. 174, L. 1957; amd. Sec. 1, Ch. 83, L. 1965; amd. Sec. 1, Ch. 200, L. 1967.

Duration of Act

Section 2 of Ch. 200, Laws 1967 provided "The provisions of this act as they relate to group insurance coverage for all departments, bureaus, boards, commissions and agencies of the State of Montana shall be effective until June 30, 1971 or until further extended or limited by subsequent legislative acts."

Collateral References

Counties⇐113, 114; Municipal Corporations⇐228.

20 C.J.S. Counties § 177; 63 C.J.S. Municipal Corporations § 981.

CHAPTER 11

ORDINANCES—INITIATIVE AND REFERENDUM

Section 11-1101. Style of ordinance.
11-1102. Ordinances—how prepared.
11-1103. Certain ordinances validated.
11-1104. Initiative in cities—petition.
11-1105. Submission of question at regular election.
11-1106. No ordinance to be effective until thirty days after passage.
11-1107. Referendum petition.
11-1108. Referendum to be had at regular election.
11-1109. Special election may be ordered.
11-1110. Proclamation of election.
11-1111. Ballots and method of voting.
11-1112. Qualifications of voters.
11-1113. Forms of petitions and conduct of proceedings.
11-1114. Applicability of referendum provisions.

11-1101. (5055) **Style of ordinance.** The style of ordinances may be as follows: "Be it ordained by the council of the city of ....., or town of .....," and all ordinances may be published or posted, as prescribed by the council.

History: En. Sec. 4804, Pol. C. 1895; re-en. Sec. 3264, Rev. C. 1907; re-en. Sec. 5055, R. C. M. 1921.

Collateral References

Municipal Corporations⇐105.

62 C.J.S. Municipal Corporations § 411 et seq.

11-1102. (5056) **Ordinances—how prepared.** (1) All ordinances, by-laws and resolutions must be passed by the council and approved by the mayor, or the person acting in his stead, and must be recorded in a book kept by the clerk called "The Ordinance Book," and numbered in the order in which they are passed.

(2) The governing body of an incorporated city or town may adopt technical building, zoning, health, electrical, and plumbing codes in whole or in part by reference. At least fifteen (15) days prior to final action by a governing body of the city or town, notice of intent to adopt a technical code in whole or in part by reference shall be published in a newspaper of general circulation in the city or town and three (3) copies of the code, or part to be adopted, shall be filed with the clerk of the city or town for inspection by the public.

(3) If a technical code, or part of a code, is adopted by reference, a record in "The Ordinance Book" may be made by recording the ordinance without setting forth the provisions of the code, or part of a code, adopted.

(4) Ordinances take effect from and after their passage, except as otherwise ordered, and no ordinance shall be passed containing more than one subject, which shall be clearly expressed in its title, except ordinances for the codification and revision of ordinances.

History: En. Sec. 4805, Pol. C. 1895; re-en. Sec. 3265, Rev. C. 1907; re-en. Sec. 5056, R. C. M. 1921; amd. Sec. 1, Ch. 38, L. 1967.

NOTE.—See also section 11-1106 which deals with effective date of ordinances.

Cross-References

Annual appropriation ordinance, sec. 84-4731.

Approval or veto by mayor, sec. 11-802.

Fixing penalties for violations, sec. 11-950.

Void when in conflict with gambling laws, sec. 94-2424.

One Subject

An ordinance calling for a special election for the authorization or rejection of an increase of the city's indebtedness by the issuance of water and sewer bonds, was not obnoxious to the prohibition contained in this section, that no ordinance shall be passed containing more than one subject. The general subject of the ordinance was the incurring of the indebtedness, and the different purposes named in it as making the indebtedness necessary were matters of detail for the information of the voters. Carlson v. City of Helena, 39 M 82, 108, 102 P 39.

The observance of the limitation imposed by this section, relative to ordinances containing more than one subject, which must be clearly expressed in its title, is mandatory, and renders void any ordinance which violates it. But whatever is germane, incidental, or necessary to the main or general subject of an ordinance may be included in it, and is not a separate subject. Compare State v. McKinney, 29 M 375, 382, 74 P 1095. See also State ex rel. Moreland v. Police Court, 87 M 17, 285 P 178. Carlson v. City of Helena, 39 M 82, 108, 102 P 39.

The restriction placed by this section upon the city council in enacting ordinances to the effect that none shall be passed containing more than one subject which shall be clearly expressed in its title, like that imposed upon the legislature in enacting a statute, must be liberally construed, and the ordinance will be sustained unless it appears beyond a reasonable doubt that it does not meet the requirement. State ex rel. Dwyer v. Mayor of City of Butte, 69 M 232, 237, 221 P 524.

An ordinance establishing a police department, repealing a series of ordinances dealing therewith, and those relating to the location and conduct of the city jail, held not open to the objection that it was void as in contravention of the provisions of this section. State ex rel. Dwyer v. Mayor of City of Butte, 69 M 232, 237, 221 P 524.

A town ordinance which, in effect, adopted all state laws defining misdemeanors and made them town ordinances, was invalid as violating the prohibition against passage of an ordinance containing more than one subject. Town of White Sulphur Springs v. Voise, 136 M 1, 334 P 2d 855, 865.

Resolution of Intention—Approval by Mayor

A resolution of intention is not valid unless approved by the mayor, and all proceedings taken thereunder are void. Hinzeman v. City of Deer Lodge, 58 M 369, 374, 193 P 395.

Suppression of Liquor Traffic

An ordinance, the title of which stated that its purpose was the suppression of the liquor traffic in a given city and in the body of which it was provided that possession of liquor was unlawful when made so by the laws of the United States, i. e., when kept for the purposes of being sold, bartered, exchanged, given away, furnished or otherwise disposed of in violation of the National Prohibition Act, was not open to the objection that its title was defective in that "traffic" did not warrant the prohibition against possession without the purpose of sale, barter, etc., possession for any of such purposes being clearly germane to the general subject of "liquor traffic." State ex rel. Moreland v. Police Court, 87 M 17, 19, 285 P 178.

References

State ex rel. Browne v. Booher, 43 M 569, 570, 118 P 271; Harvey v. Town of Townsend, 57 M 407, 188 P 897; State ex rel. O'Hern v. Loud, 92 M 307, 310, 14 P 2d 432; Dimich v. Northern Pacific Ry Co., 136 M 485, 348 P 2d 786, 793.

Collateral References

Municipal Corporations⇨106 (1) et seq.

62 C.J.S. Municipal Corporations § 416 et seq.

37 Am. Jur. 754, Municipal Corporations, § 141 et seq.

Validity of Sunday ordinance as affected by vagueness or uncertainty in matters covered or excepted. 91 ALR 2d 763.

11-1103. (5057) **Certain ordinances validated.** Any and all ordinances of any city or town within Montana, which have been heretofore duly recorded and signed by the mayor or presiding officer of the council and by the city clerk, as provided by section 334 of an act entitled "An act to amend section 334 of the Compiled Statutes of Montana, Fifth Division, relating to printing and posting city ordinances," duly approved March 9, 1889, which may have been published in some newspaper published within the limits of the city or town, or written copies of which said ordinances may have been posted in not less than five conspicuous places within the limits of such city or town, are hereby declared to have the same legality and validity as if such publishing or posting had been duly directed by the council of such city or town, and as if the city clerk had attached, at the expiration of each term of posting and at the end of any such ordinance or ordinances as recorded in the book of ordinances, his certificate as to the fact of posting such ordinance or ordinances, as provided for by said act herein referred to.

History: En. Sec. 5043, Pol. C. 1895; re-en. Sec. 3492, Rev. C. 1907; re-en. Sec. 5057, R. C. M. 1921.

Collateral References

Municipal Corporations⇐111 (9).
62 C.J.S. Municipal Corporations § 432.

11-1104. (5058) **Initiative in cities—petition.** (1) Ordinances may be proposed by the legal voters of any city or town in this state, in the manner provided in this act. Fifteen per cent (15%) of the legal voters of any city or town may propose to the city or town council an ordinance on the subject within the legislative jurisdiction and powers of such city or town council, or an ordinance amending or repealing any prior ordinance or ordinances. Such petition shall be filed with the city or town clerk. It shall be the duty of the city or town clerk to present the same to the council at its first meeting next following the filing of the petition. The council may, within sixty (60) days after the presentation of the petition to the council, pass an ordinance similar to that proposed in the petition, either in exact terms or with such changes, amendments, or modifications as the council may decide upon. If the ordinance proposed by the petition be passed without change, it shall not be submitted to the people, unless a petition for referendum demanding such submission shall be filed under the provisions of this act.

(2) If the council shall have made any change in the proposed ordinance, a suit may be brought in the district court in and for the county in which the city or town is situated, to determine whether or not the change is material. Such suit may be brought in the name of any one or more of the petitioners. The city shall be made the party defendant. Any elector of the city or town may appear in such suit in person or by counsel or the hearing thereof, but the court shall have the power to limit the number of counsel who shall be heard on either side, and the time to be allowed for argument. It shall only be necessary to state in the complaint that a petition for an ordinance was filed in pursuance of this act; that the city council passed an ordinance on the subject different

from that proposed in the petition; and that the plaintiff desires a construction of the ordinance so passed to determine whether or not it differ materially from that proposed. The petition and the ordinance proposed thereby, and the ordinance actually passed, may be set out in the complaint, or copies thereof annexed to the complaint. The names to the petition need not be set out. Such cases shall be advanced and brought to hearing as speedily as possible, and have precedence over other cases, except criminal and taxation cases.

(3) The court shall have jurisdiction in such cases to determine whether or not the change made by the city council is material, and also whether the petition was regular in form or substance, and shall also have power to decide, if the fact be put in issue by the defendant, whether or not the petition was signed by a sufficient number of voters and was regular in form. If the court shall decide that the change was material and that the petition was regular in form and signed by a sufficient number of legal voters, then the ordinance proposed by the petition shall be submitted to the people as provided in this act. If the court shall decide that the ordinance passed by the council was not materially different from that proposed in the petition, or the petition was not regular in form, or not signed by a sufficient number of legal voters, the ordinance shall not be submitted to the people. If the court shall decide that the changes made by the council were material, but that the petition was irregular for some reason, or not properly or sufficiently signed, a new petition, regular in form, may be presented by the required number of legal voters, asking the council to submit such ordinance to the people, and thereupon the same shall be so submitted as provided in this act.

(4) If the council shall not, within sixty (60) days, pass an ordinance on the subject of the ordinance proposed in the petition, then the ordinance proposed by the petition shall be submitted to the people. Before submitting such ordinance to the people, the mayor or city or town council may direct that a suit be brought in the district court in and for the county, in the name of the city or town, to determine whether the petition and ordinance are regular in form, and whether the ordinance so proposed would be valid and constitutional. The complaint shall name as defendants not less than ten (10) nor more than twenty (20) of the petitioners. In addition to the names of such defendants, in the caption of the complaint, there shall be added the words, "and all petitioners whose names appear on the petition for an ordinance filed on the ..... day of ....., in the year .....," stating the date of filing. The summons shall be similarly directed and shall be served on the defendants named therein, and in addition thereto shall be published at least once, at the expense of the city, in at least one (1) newspaper published in the city or town.

(5) In all suits brought under this section the decision of the district court shall be final except in cases where it shall decide that the proposed ordinance would be unconstitutional or invalid as being beyond the powers of the city or town council, and in such excepted cases the petitioners, or any of them, may appeal to the supreme court as in other cases, but shall not be required to give any bond for costs. The decision of the district court holding such ordinance valid or constitutional shall not,

however, prevent the question being raised subsequently, if the ordinance shall be passed and go into effect, by anyone affected by the ordinance. No costs shall be allowed to either side in suits or appeals under this section.

(6) If an ordinance shall be repealed pursuant to a proposal initiated by the legal voters of a city or town, as in this section provided, the city or town council may not, within a period of two (2) years thereafter, re-enact such ordinance or any ordinance so similiar thereto as not to be materially different therefrom. If during such two (2) year period the council shall enact an ordinance similar to the one repealed pursuant to initiative of the voters, a suit may be brought to determine whether such new ordinance be a re-enactment without material change of the one so repealed, and the provisions of subsections (2) and (3) hereof shall apply to such suit and determination of the issues arising thereon. Nothing herein contained shall prevent exercise of the initiative herein provided for, at any time, to procure a re-enactment of an ordinance repealed pursuant to initiative of the voters.

History: En. Ch. 167, L. 1907; Sec. 3266, Rev. C. 1907; re-en. Sec. 5058, R. C. M. 1921; amd. Sec. 1, Ch. 24, L. 1951; amd. Sec. 1, Ch. 126, L. 1967.

Application of Statute

The initiative and referendum provisions applicable to cities apply, and were evidently intended to apply only, to matters of general legislation in which all electors without distinction may take an active interest. Carlson v. City of Helena, 39 M 82, 113, 102 P 39.

Ordinances Not Subject to Initiative

Where city council, in enacting an ordinance, was simply executing an already existing law, the repeal of the ordinance was not subject to initiative. City of Billings v. Nore, 148 M 96, 417 P 2d 458, 463.

Policy of State

The adoption of the initiative and referendum as applied to municipal legislation, among other things, indicates that it is the policy of this state to confide to the citizens of municipalities the right of local self-control to the utmost extent compatible with an orderly system of state government. State ex rel. Gerry v. Edwards, 42 M 135, 150, 111 P 734.

Collateral References

Municipal Corporations⇐108 et seq.

62 C.J.S. Municipal Corporations § 449 et seq.

37 Am. Jur. 841, Municipal Corporations, § 204 et seq.

Character of subject matter of ordinance within operation of initiative and referendum provisions. 122 ALR 769.

Construction and application of constitutional or statutory provisions expressly excepting certain laws from referendum. 146 ALR 284 and 100 ALR 2d 314.

Right of signer of petition or remonstrance to withdraw therefrom or revoke withdrawal, in time therefor. 27 ALR 2d 604.

Power of legislative body to amend, repeal or abrogate initiative or referendum measure, or enact measure defeated on referendum. 33 ALR 2d 1118.

Conclusiveness of declaration in ordinance of an emergency. 35 ALR 2d 586.

11-1105. (5059) **Submission of question at regular election.** Any ordinance proposed by petition as aforesaid, which shall be entitled to be submitted to the people, shall be voted on at the next regular election to be held in the city or town, unless the petition therefor shall ask that the same be submitted at a special election, and such petition be signed by not less than fifteen per cent of the electors qualified to vote at the last preceding municipal election.

History: En. Ch. 167, L. 1907; Sec. 3267 Rev. C. 1907; re-en. Sec. 5059, R. C. M. 1921.

Collateral References

Municipal Corporations⇐108.10.

62 C.J.S. Municipal Corporations § 458.

11-1106. (5060) **No ordinance to be effective until thirty days after passage.** No ordinance or resolution passed by the council of any city or town shall become effective until thirty days after its passage, except general appropriation ordinances providing for the ordinary and current expenses of the city or town, excepting also emergency measures, and in the case of emergency measures the emergency must be expressed in the preamble or in the body of the measure, and the measure must receive a two-thirds vote of all the members elected. In emergency ordinances the resolutions shall include only such measures as are immediately necessary for the preservation of peace, health, and safety, and shall not include a franchise or license to a corporation or individual, nor any provisions for the sale of real estate, nor any lease or letting of any property for a period exceeding one year, nor the purchase or sale of personal property exceeding five thousand dollars in value.

History: En. Ch. 167, L. 1907; Sec. 3268, Rev. C. 1907; re-en. Sec. 5060, R. C. M. 1921.

Application of Section

This section has no application to an ordinance providing for the issuance of water and sewer bonds after sanction of the taxpayers affected thereby has been obtained. The law has to do with matters of general legislation on which all electors, whether taxpayers or not, may vote, while the question whether bonds shall be issued can be submitted to taxpayers only. Carlson v. City of Helena, 39 M 82, 113, 102 P 39.

Bond Issues

This statute, being a general statute, held not controlling where a city seeks to sell bonds for the acquisition of a self-supporting gas distribution system under authority of chapter 141, Laws 1935 (omitted) known as "The Revenue Bond Act of 1935," section 15 thereof specifically providing that if any of the provisions of the chapter are inconsistent with any other statute, the provisions of the chapter shall be controlling. Montana-Dakota Utilities Co. v. City of Havre, 109 M 164, 176, 94 P 2d 660.

Emergency Measure Excepted from Referendum Act

As against the contention that to compel a city to pass an ordinance or resolution for the re-zoning of the city and vacation of streets by mandamus at the instance of the city housing authority would destroy the exercise of right of referendum by the city inhabitants, held, that the housing authorities being an emergency measure, this section specifically provides that an emergency measure is excepted from the provisions of the Referendum Act. State ex rel. Great Falls Housing Authority v. City of Great Falls, 110 M 318, 331, 100 P 2d 915.

Increase in Salary

The provision of section 11-732, that the salary of a city officer shall not be increased or diminished during his term of office, means the term the officer is then serving, and where the salary of a mayor was increased by ordinance near the close of his first term, which increase could not, under this section become effective until after his second term had commenced, the increase was made during his prior term and not during the term he was then serving, and the officer was entitled thereto. Broadwater v. Kendig, 80 M 515, 522, 261 P 264.

References

State ex rel. Quintin v. Edwards, 40 M 287, 298, 106 P 695; Dimich v. Northern Pacific Ry. Co., 136 M 485, 348 P 2d 786, 793; State ex rel. Konen v. City of Butte, 144 M 95, 394 P 2d 753, 757.

Collateral References

Municipal Corporations⊂120.
62 C.J.S. Municipal Corporations § 442.

11-1107. (5061) **Referendum petition.** During the thirty (30) days following the passage of any ordinance or resolution, ten per cent (10%) of the qualified electors of the city or town may, by petition addressed to the council and filed with the clerk of the city or town, demand that such ordinance or resolution, or any part or parts thereof, shall be submitted to the electors of the city or town.

History: En. Ch. 167, L. 1907; Sec. 3269, Rev. C. 1907; re-en. Sec. 5061, R. C. M. 1921; amd. Sec. 1, Ch. 94, L. 1967.

References

State ex rel. Great Falls Housing Authority v. City of Great Falls, 110 M 318, 331, 100 P 2d 915; Stephens v. City of Great Falls, 119 M 368, 175 P 2d 408, 415.

Collateral References

Municipal Corporations⇐108.10.
62 C.J.S. Municipal Corporations § 456.
37 Am. Jur. 841, Municipal Corporations, § 204 et seq.

11-1108. (5062) **Referendum to be had at regular election.** Any measure on which a referendum is demanded under the provisions of this act shall be submitted to the electors of the city or town at the next municipal election; provided, the petition or petitions shall have been filed with the city clerk at least thirty days before such election. If such petition or petitions be signed by not less than fifteen per cent of the qualified electors of the city or town, the measure shall be submitted at a special election to be held for the purpose.

History: En. Ch. 167, L. 1907; Sec. 3270, Rev. C. 1907; re-en. Sec. 5062, R. C. M. 1921.

References

Stephens v. City of Great Falls, 119 M 368, 175 P 2d 408, 415.

11-1109. (5063) **Special election may be ordered.** The city or town council may in any case order a special election on a measure proposed by the initiative, or when a referendum is demanded, or upon any ordinance passed by the city or town council, and may likewise submit to the electors, at a general election, any ordinance passed by the city or town council.

History: En. Ch. 167, L. 1907; Sec. 3271 Rev. C. 1907; re-en. Sec. 5063, R. C. M. 1921.

11-1110. (5064) **Proclamation of election.** Whenever a measure is ready for submission to the electors, the clerk of the city or town shall, in writing, notify the mayor thereof, who, forthwith, shall issue a proclamation setting forth the measure and the date of the election or vote to be had thereon. Said proclamation shall be published four days in four consecutive weeks in each daily newspaper in the municipality, if there be such, otherwise in the weekly newspapers published in the city or town. In case there is no weekly newspaper published, the proclamation and the measure shall be posted conspicuously throughout the city or town.

History: En. Ch. 167, L. 1907; Sec. 3272, Rev. C. 1907; re-en. Sec. 5064, R. C. M. 1921.

11-1111. (5065) **Ballots and method of voting.** The question to be balloted upon by the electors shall be printed on the initiative or referendum ballot, and the form shall be that prescribed by law for questions submitted at state elections. The referendum or initiative ballots shall be counted, canvassed, and returned by the regular board of judges, clerks, and officers, as votes for candidates for office are counted, canvassed, and returned. The returns for the questions submitted by the voters of the municipality shall be on separate sheets, and returned to the clerk of the municipality. The returns shall be canvassed in the same manner as the returns of regular elections for municipal officers. The mayor of the muni-

cipality shall issue his proclamation, as soon as the result of the final canvass is known, giving the whole number of votes cast in the municipality for and against such measure, and it shall be published in like manner as other proclamations herein provided for. A measure accepted by the electors shall take effect five days after the vote is officially announced.

History: En. Ch. 167, L. 1907; Sec. 3273, Rev. C. 1907; re-en. Sec. 5065, R. C. M. 1921.

Collateral References

Municipal Corporations⇐ 108.10.
62 C.J.S. Municipal Corporations § 458.

References

Stephens v. City of Great Falls, 119 M 368, 175 P 2d 408, 415.

11-1112. (5066) **Qualifications of voters.** The qualifications for voting on questions submitted to the electors, under the provisions hereof, shall be the same as those required for voting at municipal elections in the city or town at elections for mayor or aldermen thereof. And where, by the laws of the state, or by ordinance of the city or town made in pursuance thereof, electors are required to register in order to be qualified to vote at municipal elections, the registration book or books shall be prima facie evidence of the right to sign any petition herein provided for.

History: En. Ch. 167, L. 1907; Sec. 3274, Rev. C. 1907; re-en. Sec. 5066, R. C. M. 1921.

11-1113. (5067) **Forms of petitions and conduct of proceedings.** The form of petitions and the proceedings under this act shall conform as nearly as possible, with the necessary changes as to details, to the provisions of the laws of the state relating to the initiative and referendum, and be regulated by such laws, except as otherwise provided in this act. The city clerk shall perform the duties which, under the state laws, devolve upon the county clerk and secretary of state, in so far as the provisions relating thereto may be made to apply to the case of the city or town clerk; but it shall not be necessary to mail or distribute copies of the petitions or measures to the electors of the city or town.

History: En. Ch. 167, L. 1907; Sec. 3275, Rev. C. 1907; re-en. Sec. 5067, R. C. M. 1921.

11-1114. (5068) **Applicability of referendum provisions.** The provisions of this act regarding the referendum shall not apply to ordinances which are required by any other law of the state to be submitted to the voters or the electors or taxpayers of any city or town.

History: En. Ch. 167, L. 1907; Sec. 3276, Rev. C. 1907; re-en. Sec. 5068, R. C. M. 1921.

References

Carlson v. City of Helena, 39 M 82, 113, 102 P 39; State ex rel. Gerry v. Edwards, 42 M 135, 150, 111 P 734.

CHAPTER 12

CONTRACTS AND FRANCHISES

Section 11-1201. Officers must not be interested in contracts.
11-1202. Awarding contracts—advertisement—limitations—installments—sales of supplies—construction of buildings—purchases from government agencies—exemptions.

11-1203. Contractor—oath of.
11-1204. Alteration and modification of contract—how made.
11-1205. No allowance for extra work.
11-1206. Franchise, how granted.
11-1207. Grant of franchise must be submitted to taxpaying freeholders.
11-1208. Grant of franchise must be submitted to taxpaying freeholders—notice of election.
11-1209. When voted, council must pass ordinance.

11-1201. (5069) **Officers must not be interested in contracts.** The mayor, or any member of the council, or any city or town officer, or any relative or employee thereof, must not be directly or indirectly interested in the profits of any contract entered into by the council while he is or was in office.

History: En. Sec. 345, 5th Div. Comp. Stat. 1887; amd. Sec. 4806, Pol. C. 1895; re-en. Sec. 3277, Rev. C. 1907; re-en. Sec. 5069, R. C. M. 1921.

Application of Section

This section is not applicable to a mayor who was not interested in a contract made with the city, but who agreed, after the contract was accepted and filed with the proper official, to take stock in a corporation succeeding to the rights of the original contractor. State ex rel. Great Falls Water Works v. Great Falls City Council, 19 M 518, 530, 49 P 15.

Where Franchised Utility in No Position To Complain

Where plaintiff utility operating under a nonexclusive city franchise, sought to enjoin a city from selling bonds for the purpose of securing its own gas distributing system, on ground of unlawful competition, held, that it could not question the legality of any other contract entered into by the city in connection with the enterprise, and hence was in no position to complain that the city's contract with a contracting firm relating to a supply of natural gas was illegal because a city employee, not served with summons, was interested in the contract contrary to this section. Montana-Dakota Utilities Co. v. City of Havre, 109 M 164, 177, 94 P 2d 660.

Collateral References

Municipal Corporations⇨231 (1).

63 C.J.S. Municipal Corporations § 988 et seq.

37 Am. Jur. 895, Municipal Corporations, § 274 et seq.

Relation as creditor of contracting party as constituting interest within statute against public officer being interested in contract with the public. 73 ALR 1352.

Relationship as disqualifying interest within statute making it unlawful for an officer to be interested in a public contract. 74 ALR 792.

11-1202. (5070) **Awarding contracts — advertisement—limitations—installments—sales of supplies—construction of buildings—purchases from government agencies—exemptions.** All contracts for work, or for supplies, or for material, or for the construction of any building, for which must be paid a sum exceeding one thousand dollars ($1,000.00), must be let to the lowest responsible bidder after advertisement for bids; provided that no contract shall be let extending over a period of three (3) years or more without first submitting the question to a vote of the taxpaying electors of said city or town. Such advertisement shall be made in the official newspaper of the city or town, if there be such official newspaper, and if not it shall be made in a daily newspaper of general circulation published in the city or town, if there be such, otherwise by posting in three (3) of the most public places in the city or town. Such advertisement if by publication in a newspaper shall be made once each week for two consecutive weeks and the second publication shall be made not less than five (5) days nor more than twelve (12) days before the consideration of bids. If such advertisement is made by posting, fifteen (15)

days must elapse, including the day of posting, between the time of the posting of such advertisement and the day set for considering bids. The council may postpone action as to any such contract until the next regular meeting after bids are received in response to such advertisement, may reject any and all bids and readvertise as herein provided. The provisions of this section as to advertisement for bids shall not apply upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot or insurrection, or any other similar emergency, but in such case the council may proceed in any manner which, in the judgment of three-fourths (¾) of the members of the council present at the meeting, duly recorded in the minutes of the proceedings of the council by aye and nay vote, will best meet the emergency and serve the public interest. Such emergency shall be declared and recorded at length in the minutes of the proceedings of the council at the time the vote thereon is taken and recorded.

When the amount to be paid under any such contract shall exceed one thousand dollars ($1,000.00) the council may provide for the payment of such amount in installments extending over a period of not more than three (3) years; provided that when such amount is extended over a term of two (2) years at least forty per centum (40%) thereof shall be paid the first year and the remainder the second year, and when such amount is extended over a term of three (3) years, at least one-third (1/3) thereof shall be paid each year; provided that at the time of entering into such contract, there shall be an unexpended balance of appropriation in the budget for the then current fiscal year available and sufficient to meet and take care of such portion of the contract price as is payable during the then current fiscal year, and the budget for each following year, in which any portion of such purchase price is to be paid, shall contain an appropriation for the purpose of paying the same.

Old supplies or equipment may be sold by the city or town to the highest responsible bidder, after calling for bid purchasers as herein set forth for bid sellers, and such city or town may trade in supplies or old equipment on new supplies or equipment at such bid price as will result in the lowest net price.

Also a city or town may, without bid, when there are sufficient funds in the budget for supplies or equipment, purchase such supplies or equipment from government agencies available to cities or towns when the same can be purchased by such city or town at a substantial saving to such city or town.

All necessary contracts for professional, technical, engineering and legal services are excluded from the provisions of this act.

History: En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R. C. M. 1921; amd. Sec. 1, Ch. 22, L. 1927; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 22, L. 1927; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963.

Construction of Section

The requirement of this section extends to and includes expenditures made from the general revenues of the municipality, as well as from funds derived from special assessments. Ford v. City of Great Falls, 46 M 292, 311, 127 P 1004.

Letting Contract to Higher Bidder Held Warranted

Where a city council received two bids for fire-fighting equipment, one for $3,155.55 and the other for $3500, both bidders substantially meeting the specifications stated in the advertisement for bids, and after conducting a fair investigation into the relative merits of both, and witnessing a demonstration of the equipment offered by the successful bidder who also offered continuous servicing, not offered by the unsuccessful one, there were substantial and plausible reasons justifying the letting of the contract to the higher bidder. Koich v. Cvar, 111 M 463, 466, 110 P 2d 964.

Lowest Responsible Bidder

To successfully attack the letting of a contract for a municipal improvement, it must be shown that the contract was not let to the lowest responsible bidder, that there was not any opportunity afforded for competitive bidding, or that there was collusion or bad faith on the part of the council or such gross mistake as to preclude the exercise of sound judgment. O'Brien v. Drinkenberg, 341 M 58, 550, 111 P 137.

Under the exclusive rather than directory nature of the limitation upon the power of cities to let contracts prescribed by this section, a contract entered into by a city with a street railway company, according to the terms of which the latter was to be paid the cost of removing and replacing its tracks on certain streets to enable the former to lay sewers, was void, it not having been let to the lowest responsible bidder as required by the statute. Missoula Street Ry. Co. v. City of Missoula, 47 M 85, 95, 130 P 771; Commonwealth Public Service Co. v. City of Deer Lodge, 96 M 48, 64, 29 P 2d 667.

The "lowest responsible bidder," within the meaning of this statute, does not mean merely the one whose pecuniary ability to perform the contract is deemed the best, but does mean the one who is most likely in regard of skill, ability and integrity to do faithful and conscientious work and promptly to fulfill the contract according to its letter and spirit; the city council has a broad discretion in determining what bid answers that requirement, the members thereof not being purely ministerial officers but in that connection exercising quasi-judicial functions. Koich v. Cvar, 111 M 463, 465, 110 P 2d 964.

No Recovery under Void Public Contracts

Contracts not let on competitive bidding when required under this section are not only void, but in actions to recover the reasonable value of property where restoration cannot be made excepting at cost exceeding the price (buried water pipe in the instant case) the courts will refuse to enforce the claim, leaving the parties where they placed themselves unlawfully; quasi or constructive contracts based on unjust enrichment and enforced by action ex contractu rest on equitable principles. This section was enacted for economy and protection of the public. Builders Supply Co. v. City of Helena, 116 M 368, 372, 154 P 2d 270, reversing the dictum in Missoula Street Ry. Co. v. City of Missoula, 47 M 85, 130 P 771.

Patented Processes—Use in Construction

Where a city council incorporated in a resolution ordering the paving of a street, as well as in the call for bids, the requirement that in the construction of the pavement certain patented processes and compounds should be used, and the company controlling the patent agreed that the cost of such material, which constituted only a part of the gross cost of the improvement, should be the same to all bidders, while in other respects, such as the cost of labor, other materials, etc., the principle of competition was retained, the proceedings were not void as being violative of this section. Ford v. City of Great Falls, 46 M 292, 311, 127 P 1004.

Purpose of Section

This section is designed to prevent favoritism and to secure to the public the best possible return for the expenditure of the funds which the property owners are required to furnish, through the payment of taxes and assessments. Ford v. City of Great Falls, 46 M 292, 311, 127 P 1004.

Submitting Contracts to Taxpayers

Under section 15, chapter 141, Laws 1935 (omitted), known as "The Revenue Bond Act of 1935," authorizing municipalities to create self-supporting undertakings in the nature of furnishing facilities for distribution of natural gas, etc., being a special statute, a city entering into contracts for the acquisition of a natural gas supply, is relieved of the necessity of submitting such contracts to the resident taxpayers for their approval or rejection where the sum to be paid exceeds $500, as otherwise required by this section. Montana-Dakota Utilities Co. v. City of Havre, 109 M 164, 178, 94 P 2d 660.

Waterworks Construction Contract

A contract with a city for the construction of a system of waterworks is governed by the provisions of this section and sections 11-1203 to 11-1205. City of Forsyth v. Crellin, 210 Fed 835, 838.

References

City of Butte v. Bennetts, 51 M 27, 29, 149 P 92; Marchi v. Brackman, 130 M 228, 299 P 2d 761, 766; State ex rel. Simmons v. City of Missoula, 144 M 210, 395 P 2d 249, 250.

Collateral References

Municipal Corporations⇐235 et seq.
63 C.J.S. Municipal Corporations § 999.
43 Am. Jur. 750, Public Works and Contracts, § 10 et seq.

11-1203. (5071) **Contractor—oath of.** No money must be paid to any person claiming under a contract with the council, until such person has first filed with the clerk a statement, under oath, disclosing the names of all persons directly or indirectly interested in the contract, of the proceeds or profits thereof, declaring that no persons other than those named are interested, and that no person forbidden by this title has any interest in the same.

History: En. Sec. 4808, Pol. C. 1895; re-en. Sec. 3279, Rev. C. 1907; re-en. Sec. 5071, R. C. M. 1921.

References

State ex rel. Great Falls Water Works v. Great Falls City Council, 19 M 518, 527, 540, 49 P 15; City of Forsyth v. Crellin, 210 Fed 835, 837.

Collateral References

Municipal Corporations⇐253.
63 C.J.S. Municipal Corporations § 1022.

11-1204. (5072) **Alteration and modification of contract—how made.** When it becomes necessary, in the prosecution of any work, to make alterations or modifications of the specifications or plans of a contract, such alteration or modification must only be made by resolution of the council, and such resolution is of no effect until the price to be paid for the same is agreed to in writing, and signed by the contractor and approved by the council.

History: En. Sec. 4809, Pol. C. 1895; re-en. Sec. 3280, Rev. C. 1907; re-en. Sec. 5072, R. C. M. 1921.

References

City of Forsyth v. Crellin, 210 Fed 835, 837.

Collateral References

Municipal Corporations⇐252.
63 C.J.S. Municipal Corporations § 1016 et seq.
43 Am. Jur. 847, Public Works and Contracts, §§ 108-120.

11-1205. (5073) **No allowance for extra work.** No contractor must be allowed anything for extra work caused by an alteration or modification, unless a resolution is made and an agreement signed as provided in the preceding section, nor must he in any case be allowed more for such alteration than the price fixed by such agreement.

History: En. Sec. 4810, Pol. C. 1895; re-en. Sec. 3281, Rev. C. 1907; re-en. Sec. 5073, R. C. M. 1921.

References

City of Forsyth v. Crellin, 210 Fed 835, 837.

11-1206. (5074) **Franchise, how granted.** The council must not grant a franchise or special privilege to any person save and except in the manner specified in the next section. The powers of the council are those only expressly prescribed by law and those necessarily incident thereto.

History: En. Sec. 4813, Pol. C. 1895; re-en. Sec. 3290, Rev. C. 1907; amd. Sec. 1, Ch. 29, L. 1921; re-en. Sec. 5074, R. C. M. 1921.

11-1207. (5075) **Grant of franchise must be submitted to taxpaying freeholders.** No franchise for any purpose whatsoever shall be granted

by any city or town, or by the mayor or city council thereof, to any person or persons, association, or corporation, without first submitting the application therefor to the resident freeholders whose names shall appear on the city or county tax-roll preceding such election.

History: En. Sec. 1, Ch. 85, L. 1903; re-en. Sec. 3291, Rev. C. 1907; re-en. Sec. 5075, R. C. M. 1921.

Approval by Qualified Electors

A city is prohibited from granting a franchise to a gas company to lay its mains in its streets, until the application for it has first been submitted to and approved by the qualified electors. State ex rel. City of Billings v. Billings Gas Co., 55 M 102, 108, 173 P 799.

Construction of Section

The word "franchise" in this section is used in the same sense as it is in sections 16 and 17, article XII of the state constitution, where it is classed as property and subject to taxation as such. Glodt v. City of Missoula, 121 M 178, 190 P 2d 545, 548.

Parking Meters

The purchase of parking meters under a conditional sales contract whereby the city determines the location, controls the use and operation and collects the revenues, the vendor to be paid from a percentage of the revenues, and after the total price is paid the meters to become the property of the city, did not constitute the granting of a franchise. Glodt v. City of Missoula, 121 M 178, 190 P 2d 545, 548.

Collateral References

Municipal Corporations⇨279.
63 C.J.S. Municipal Corporations § 1066.

11-1208. (5076) **Grant of franchise must be submitted to taxpaying freeholders—notice of election.** A notice of such election must be published at least in one daily newspaper, if there be one published in the city or town, and if not, in some weekly newspaper of general circulation, at least once a week for three successive weeks, and such notice must be posted in three public places in the city or town. The notice must state the time and place of holding the election, and the character of any such franchise applied for, and the valuable consideration, if any there be, to be derived by the city. At such election the ballots must contain the words, "For granting franchise," "Against granting franchise," and in voting, the elector must make a cross thus, "X" opposite the answer he intends to vote for. Such election must be conducted and canvassed and the return made in the same manner as other city or town elections.

History: En. Sec. 2, Ch. 85, L. 1903; re-en. Sec. 3292, Rev. C. 1907; re-en. Sec. 5076, R. C. M. 1921.

11-1209. (5077) **When voted, council must pass ordinance.** If the majority of the votes cast as the election be "For granting franchise," the mayor and city council must thereupon grant the same by the passage and approval of a proper ordinance.

History: En. Sec. 3, Ch. 85, L. 1903; re-en. Sec. 3293, Rev. C. 1907; re-en. Sec. 5077, R. C. M. 1921.

CHAPTER 13

PRESENTATION AND PAYMENT OF CLAIMS—CITY WARRANTS

Section 11-1301. Presentation of claims—limitation of actions.
11-1302. Allowance and payment of claims—cash basis.
11-1303. Cities may avail themselves of Municipal Corporation Bankruptcy Act.
11-1304. Composition of indebtedness to state.
11-1305. Defective highways and public works—notice of claims for injuries.

11-1306. Nonliability of municipality for injuries caused by accumulations of snow or ice in streets or public ways.
11-1307. City warrants—rate of interest.
11-1308. Call for payment.
11-1309. Registry of warrants.
11-1310. Investment of city or town moneys in city or town warrants and approved securities.

11-1301. (5078) **Presentation of claims—limitation of actions.** All accounts and demands against a city or town must be presented to the council duly itemized. All claims against a city or town shall contain the following statement: "I certify that this claim is correct and just in all respects, and that payment or credit has not been received." Claims need not be accompanied by affidavit by the party or his agent. These claims must be presented with all necessary and proper vouchers, within one (1) year from the date the same accrued; and any claim or demand not so presented within the time aforesaid is forever barred, and the council has no authority to allow any account or demand not so presented, nor must any action be maintained against the city or town for or on account of any demand or claim against the same, until such demand or claim has first been presented to the council for action thereon; provided, however, that in case the total indebtedness of a city or town has reached three per centum (3%) of the total assessed valuation of the taxable property of such city or town, as ascertained by the last assessment for state and county taxes, it shall be lawful for, and such city or town is hereby authorized and empowered, to conduct its affairs and business on a cash basis as provided and contemplated by the next section of this code.

History: En. Sec. 4812, Pol. C. 1895; re-en. Sec. 2, Ch. 30, L. 1903; re-en. Sec. 3288, Rev. C. 1907; re-en. Sec. 5078, R. C. M. 1921; amd. Sec. 1, Ch. 55, L. 1957.

Cross-Reference

Claims for salaries, limitations, secs. 93-2609, 93-2610.

Application of Section

The provision of this section, requiring claims against a city to be verified and filed with the municipality, has no application to a claim for salary fixed by ordinance; hence a police officer was under no obligation to so present his claim to entitle him to recover his salary for the time he was unlawfully deprived of his office. Wynne v. City of Butte, 45 M 417, 423, 123 P 531.

This section was evidently intended to cover claims against the city arising in the ordinary course in carrying on the city government, in providing for the city's welfare in sundry directions, and in transacting the business and economic affairs of the city, but not on such contracts as are specifically provided for, which it must be presumed are designed to contain their own specific provisions, and, among other material and essential conditions, stipulations respecting the time and manner of the payment of the consideration on the part of the city. City of Forsyth v. Crellin, 210 Fed 835, 838.

Limit of Indebtedness Reached

Where a city has reached its limit of indebtedness as prescribed by section 6, article XIII of the constitution, any further indebtedness incurred is void; thereafter it is without power to allow claims against it and draw warrants in payment thereof, but under this section and section 11-1302 the city may operate under the pay-as-you-go plan, i. e., by payment in cash. Commonwealth Public Service Co. v. City of Deer Lodge, 96 M 15, 28 P 2d 472.

By enacting this section and section 11-1302, authorizing cities to operate on a cash basis where they have reached the constitutional limit of indebtedness, the legislature did not attempt what it has no power to do: permit them to create indebtedness in excess of such limit, but provided a device by which, without creating an additional indebtedness, they may function on a cash basis. Commonwealth Public Service Co. v. City of Deer Lodge, 96 M 15, 28 P 2d 472.

Payment of Special Assessment under Protest

Under this section, if moneys paid under protest, for a special assessment in an improvement district, are not for a "tax,

license, or other demand for public revenue," such payment, if it can form the basis of an action at all, stands as a mere demand against the city, not suable until after presentation to and disallowance by the city council, which presentation and disallowance must appear upon the face of the complaint. Leggat v. City of Butte, 54 M 137, 140, 168 P 38, distinguished in 57 M 407, 409, 188 P 897.

References

Helena Water Works Co. v. City of Helena, 27 M 205, 208, 70 P 513; Dawes v. City of Great Falls, 31 M 9, 13, 77 P 309; Helena Water Works Co. v. City of Helena, 31 M 243, 246, 78 P 220; Palmer v. City of Helena, 40 M 498, 505, 107 P 512; State ex rel. Driffill v. City of Anaconda, 41 M 577, 578, 111 P 345; Harvey v. Town of Townsend, 57 M 407, 409, 18 P 897; Campbell v. City of Helena, 92 M 366, 16 P 2d 1; Lillis v. City of Big Timber, 103 M 206, 211, 62 P 2d 219.

Collateral References

Municipal Corporations⇐1001 et seq., 1005.

64 C.J.S. Municipal Corporations § 2173 et seq.

38 Am. Jur. 379, Municipal Corporations, § 671 et seq.

11-1302. (5079) **Allowance and payment of claims—cash basis.** All accounts and demands against a city or town must be submitted to the council, and if found correct, must be allowed and an order made that the demand be paid, upon which the mayor must draw a warrant upon the treasurer in favor of the owner, specifying for what purpose and by what authority it is issued, and out of what funds it is to be paid, and the treasurer must pay the same out of the proper fund; provided, however, that in case the total indebtedness of a city or town has reached the limit of three per cent provided in section 6 of article XIII of the constitution of the state of Montana, it shall be lawful for, and said city or town is hereby authorized and empowered, to thereafter manage and conduct its business affairs on a cash basis and pay the reasonable and necessary current expenses of the city or town out of the cash in the city or town treasury and derived from its current revenues, under such restrictions and regulations as the city or town council may by ordinance prescribe; and in the event that payment be made in advance, the city or town shall have power to require a cash deposit as collateral security and indemnity, equal in amount to such payment, and may hold the same as a special deposit with the city treasurer, in package form, as a pledge for the fulfilment and performance of the contract or obligation for which said advance shall have been made; and provided, further, that before the payment of the current expenses above mentioned, the city or town council shall first set apart sufficient moneys to pay the interest upon its legal, valid, outstanding bonded indebtedness and any sinking funds therein provided for, and shall be authorized to pay all valid claims against funds raised by tax especially authorized by law for the purpose of paying such claims.

History: En. Sec. 1, Ch. 30, L. 1903; re-en. Sec. 3287, Rev. C. 1907; re-en. Sec. 5079, R. C. M. 1921.

Application of Statute

The provisions of this section and section 11-1303 do not apply to a claim for damages arising from personal injuries. Dawes v. City of Great Falls, 31 M 9, 13, 77 P 309.

City Exceeding Debt Limit

Where a city had exceeded its debt limit, it could not incur an indebtedness not payable from a specially authorized tax, but payable from funds previously appropriated, under an agreement that the claimants should accept warrants in payment of their claims, and if the warrant should not be paid, the city should not be liable thereon. The payment of such claims on the theory that the appropriation by ordinance was an assignment of the funds so appropriated for the payment of the claims was unauthorized. Helena Water Works Co. v. City of Helena, 27 M 205, 208, 70 P 513.

A city which, having reached the constitutional limit of indebtedness, finds itself in financial straits, will not be heard to say, in defense of its violation of a

civil service statute in removing a fireman contrary to its provisions, that it did so to reduce expenses, where it has failed to take advantage of this section and section 11-1303, authorizing cities in such condition to pay their running expenses from current revenues upon a cash basis. State ex rel. Driffill v. City of Anaconda, 41 M 577, 584, 111 P 345.

Where a city has reached its limit of indebtedness as prescribed by section 6, article XIII of the constitution, any further indebtedness incurred is void; thereafter it is without power to allow claims against it and draw warrants in payment thereof, but under this section and section 11-1301, may operate under the pay-as-you-go plan, i. e., by payment in cash. Commonwealth Public Service Co. v. City of Deer Lodge, 96 M 15, 28 P 2d 472.

By enacting this section and section 11-1303, authorizing cities to operate on a cash basis where they have reached the constitutional limit of indebtedness, the legislature did not attempt what it has no power to do: permit them to create indebtedness in excess of such limit, but provided a device by which, without creating an additional indebtedness, they may function on a cash basis. Commonwealth Public Service Co. v. City of Deer Lodge, 96 M 15, 28 P 2d 472.

Lease Payments

Under resolution providing that city would convey title to properties to party who would cause to be built on one property a city-approved building which the city would rent for an annual rental for a period of three years with option in the city to purchase property together with the building thereon, lease payments were forms of indebtedness within section 6, article XIII of the constitution, limiting indebtedness that may be incurred by city. State ex rel. Simmons v. City of Missoula, 144 M 210, 395 P 2d 249, 251.

Purpose of Statute

This section and section 11-1303 were enacted to permit cities, which have reached their constitutional limit of indebtedness, to conduct their affairs upon a cash basis and pay reasonable and necessary current expenses out of current revenues, or in cash in advance, upon requiring indemnity in the form of a cash deposit, to be held by the treasurer. Palmer v. City of Helena, 40 M 498, 505, 107 P 512.

What Are Current Expenses

The term "current" was doubtless employed by the legislature to distinguish the common, recurring, running expenses of a city from such expenses as partake of the nature of an investment, or such as are to be incurred in a substantial or permanent improvement. Helena Water Works Co. v. City of Helena, 31 M 243, 248, 78 P 220.

The determination of what is a current expense is for the courts; but the determination of the city council as to whether a particular current expense is reasonable and necessary is not subject to review by the courts in the absence of fraud or abuse of discretion. Helena Water Works Co. v. City of Helena, 31 M 243, 248, 78 P 220. See also State ex rel. Rowling v. City of Butte, 43 M 331, 335, 117 P 604.

An expenditure to install and operate a water system to belong to the city is not for current expenses, and not authorized by this statute. Helena Water Works Co. v. City of Helena, 31 M 243, 248, 78 P 220.

Under this section and section 11-1303, a city, which is indebted in excess of the limit prescribed by the constitution, is permitted to conduct its affairs upon a cash basis and pay "reasonable and necessary current expenses from its current revenues," but the authority of such a city extends no further than to make expenditures both reasonable and necessary for the corporate existence of the city; in other words, the right to expend public money is limited to those items of expense which may properly be designated as "living expenses." Palmer v. City of Helena, 40 M 498, 505, 107 P 512.

A city which is indebted beyond the constitutional limitation may not use its surplus revenues, no matter from what source derived, to acquire an electric light plant to supply itself and its inhabitants with light, where a company, operating both gas and electric light systems, under a franchise from the city, has ample facilities to meet all requirements. An expenditure of this character does not fall within the definition of "reasonable and necessary current expenses" which a city laboring under such disability, has power to incur under this and the following sections. Palmer v. City of Helena, 40 M 498, 505, 107 P 512.

References

Larkin v. City of Butte, 52 M 410, 413, 158 P 316; State ex rel. O'Connor v. McCarthy, 86 M 100, 108, 282 P 1045; Campbell v. City of Helena, 92 M 366, 16 P 2d 1; Lillis v. City of Big Timber, 103 M 206, 211, 62 P 2d 219.

Collateral References

Municipal Corporations⇐864 (2), 897.

64 C.J.S. Municipal Corporations §§ 1846 et seq., 2185.

38 Am. Jur. 408, Municipal Corporations, § 705.

Power of city or its officials as to compromise of claims. 105 ALR 170 and 15 ALR 2d 1359.

11-1303. Cities may avail themselves of Municipal Corporation Bankruptcy Act. That the state of Montana does hereby consent and exact that any city or town of the state of Montana, upon and after the adoption by its city council or town council of an ordinance or resolution declaring (1) that it is insolvent or unable to meet its debts as they mature and (2) that it desires to effect a plan for the composition of its debts under the provisions of the "Municipal Corporation Bankruptcy Act" of the United States as amended, added to, and now existing, and providing (3) that said city or town shall proceed to the composition of its municipal indebtedness under the provisions of said act, and (4), upon the acceptance in writing of the plan of composition of its municipal indebtedness proposed by such municipality by creditors of the petitioning municipal corporation owning not less than the percentage thereof in amount of the municipal, securities affected or to be affected by the proposed plan of composition, as provided in said act, shall have the right and power to submit itself and such proposed plan of composition to the jurisdiction of the bankruptcy court having jurisdiction of such matter and to be governed by the proceedings, orders and decrees of said court in the manner and extent, and as provided by said act, and to compose and to enter into, submit itself to, and to perform, the plan of composition in the manner prescribed and required by said act and the orders and decrees of said court thereunder and as affected thereby.

History: En. Sec. 1, Ch. 114, L. 1939.

11-1304. Composition of indebtedness to state. Any such city or town shall have the power to do all things, and to comply with all orders and decrees, contemplated by said Municipal Corporation Bankruptcy Act and to issue its bonds and other securities for the carrying out and consummation of the composition of its debts as provided and contemplated by said act, and as required by the orders and decrees of said court. The state of Montana or any department or agency thereof holding any of the securities of any such city or town shall have the power to consent to any plan of composition of the indebtedness of any such city or town by the board having custody of and control over any such securities or by any other official or officials having such custody and control.

History: En. Sec. 2, Ch. 114, L. 1939.

11-1305. (5080) **Defective highways and public works — notice of claims for injuries.** Before any city or town in this state shall be liable for damages to person and/or property for, or on account of, any injury or loss alleged to have been received or suffered by reason of any defect or obstructions in any bridge, street, road, sidewalk, culvert, park, public ground, ferry boat, or public works of any kind in said city or town, it must first be shown that said city or town had actual notice of such defect or obstruction and reasonable opportunity to repair such defect or remove such obstruction before such injury or damage was received; the city clerk must make a permanent record of all such reported defects and shall report to the city street commissioner immediately upon notice of such defect or obstruction; and the person alleged to have suffered such injury or damage, or someone in his behalf, shall give to the city or

town council, commission, manager, or other governing body of such city or town, within sixty days after such injury is alleged to have been received or suffered, written notice thereof, which notice shall state the time when and the place where such injury is alleged to have occurred. Provided, however, that this section shall not exempt cities and towns from liability for negligence because of failure to properly place signs, markers or signals to warn persons of excavations or other obstructions existing and caused by said city or town, upon any bridge, street, alley, road, sidewalk, pavement, culvert, park, public ground, ferry boat or public works of any kind.

History: En. Sec. 1, Ch. 93, L. 1903; re-en. Sec. 3289, Rev. C. 1907; re-en. Sec. 5080, R. C. M. 1921; amd. Sec. 1, Ch. 122, L. 1937.

Constitutionality

This section, requiring the giving of notice of a personal injury, occasioned by a defective sidewalk, as a prerequisite to the recovery of damages from the city or town, is not unconstitutional as making an unjust discrimination in favor of municipalities and against all others who may be defendants in personal injury actions; the classification made by the section is not unreasonable, and, where all cities and towns are treated alike, it cannot be said that the particular city or town in which the injury occurred is granted a special immunity, where the notice provided for has not been given. Tonn v. City of Helena, 42 M 127, 133, 111 P 715.

Amendment of Notice

The notice required by this section is not subject to amendment, and at the expiration of the time limited by that section the claimant is bound by the one he has served, and his right to institute an action is to be tested by it and none other. Berry v. City of Helena, 56 M 122, 128, 182 P 117.

"Any Defect"

The words "any defect in any sidewalk," found in this section, refer to any and every defect, deficiency, or obstruction likely to interfere with the proper use of the walk, such as an accumulation of snow and ice, etc., and not merely to some structural deficiency in the walk itself. Tonn v. City of Helena, 42 M 127, 133, 111 P 715.

Burden on Plaintiff To Show That Notice Was Given

In an action against a city to recover for personal injuries alleged to have been sustained by reason of the defective condition of a sidewalk, the plaintiff cannot prevail without affirmatively establishing the fact that the notice required by this section has been given, no matter how meritorious his claim may be. Where no testimony whatever was presented as to who filed, presented, or received the notice, it was fatal to a judgment in favor of the plaintiff. Murray v. City of Butte, 51 M 258, 265, 151 P 1051.

Case Must Be One to Which Rule Is Applicable

The rule is that for any dangerous condition of the streets brought about by the city itself it is responsible, and for any such condition brought about other than by acts done by the city itself the city's responsibility arises upon notice thereof, and for injury resulting to anyone therefrom it is liable only if it "had actual notice of such defect or obstruction and reasonable opportunity to repair such defect or remove such obstruction before such injury or damage was received." Held, where plaintiff walked over an excavation covered with boards, in the parking space, in front of a lot where a building was being constructed instead of going to the crosswalk, she cannot blame the city. Maring v. City of Billings, 115 M 249, 255, 257, 142 P 2d 316, distinguished in 123 M 270, 284, 213 P 2d 246.

Cities Not Insurers of Absolute Safety of Streets

A city is not an insurer of the absolute safety to pedestrains in the use of its streets or other public ways, nor is it liable for injuries sustained by them because of their own carelessness in traveling where there may be danger of injury to them; where alleged dangerous conditions in a street said to have caused injury to a pedestrian are plainly visible, they are themselves a warning of danger, and barriers and signals are unnecessary to warn off pedestrians. Maring v. City of Billings, 115 M 249, 256, 142 P 2d 361.

Constructive Notice Not Sufficient

In an action for damages for injury sustained by a seven-year-old boy who stumbled over some loose boards on a sidewalk placed there by a building contractor during the previous hour, it could not be contended that when the city issued

the permit to the contractor, the city thereby constituted him its agent and actual knowledge of the contractor was actual knowledge of the city, since the most that could be said for it would be constructive notice to the city, which is not sufficient. This statute calls for actual notice, and reasonable opportunity to remove the obstruction. Lazich v. City of Butte, 116 M 386, 388, 154 P 2d 260.

Degree of Care Required of City and of One Using Its Facilities

The degree of care imposed upon both the city and one who makes lawful use of municipal facilities constructed and maintained for public use is specifically enumerated in Tiddy v. City of Butte, 104 M 202, 65 P 2d 605; Barry v. City of Butte, 115 M 224, 229, 142 P 2d 571.

Failure To Give Notice

A cause of action for damage to property allegedly caused by the insufficiency of a storm sewer to handle water from a heavy rain was barred by the failure to give notice to the city within sixty days. Thompson v. City of Shelby, 136 M 562, 323 P 2d 33.

Filing Notice

Where, in an action against a city for personal injuries, a notice of claim for damages, marked "filed" by the city clerk, and bearing an endorsement that the claim had been referred to the judiciary committee of the council and disallowed, was received in evidence without objection, the requirements of this section were sufficiently complied with. O'Flynn v. City of Butte, 36 M 493, 498, 93 P 643.

This section is sufficiently complied with by filing the notice with the city clerk, and the failure of the city council to meet for sixty days does not defeat the injured party's right to sue. Tiggerman v. City of Butte, 44 M 138, 142, 119 P 477; Hensley v. City of Butte, 36 M 32, 37, 92 P 34.

Neither endorsement nor signature by the city clerk is essential to prove the giving of the notice to a city required by this section. The fact may be established by any competent evidence, such as that the filing mark was in the handwriting of the city clerk or one of his deputies, that it was made at his office, or that the notice had been called to the attention of the council. Murray v. City of Butte, 51 M 258, 265, 151 P 1051.

Infancy as Excuse for Failure To Give Notice

This section has no application where the person concerned is a child of tender years (seven years old in the instant case) stumbling over lumber piled about a foot above the level of the sidewalk, and where the parents, ignorant of the law, omitted to give notice until some nine months after the accident, when the mother, two days after her appointment as guardian, gave the required notice, the court erred in sustaining a demurrer based upon the provision for notice. Lazich v. Belanger, 111 M 48, 52, 105 P 2d 738.

Injuries to Property—Notice Not Required

This section, having been enacted under the title, "an act relating to actions against cities and towns for damages to persons injured on streets and other public grounds by reason of the negligence of any public officer, agent, or employee in any city or town in Montana" (Laws 1903, ch. 93), such section applies only to injuries to persons, as distinguished from injuries to property. Kelly v. City of Butte, 44 M 115, 118, 119 P 171, overruling Butte Machinery Co. v. City of Butte, 43 M 351, 116 P 357.

Notice as Indispensable to Liability

If the defective condition is due to the act of the municipality itself, or to its negligence, no notice to the municipality of such condition is necessary, even where actual notice is expressly required by statute. It is only when the defect or danger arises from other means than an act of the municipality that the municipality is excused until notice received (citing authorities). Barry v. City of Butte, 115 M 224, 229, 142 P 2d 571.

Notice to City of Defective Condition

In an action by a pedestrian against a municipality for injuries sustained in a fall on a sidewalk, a telephone conversation by the owner of a business adjacent to the site of the fall, to the city engineer's office to the effect that he reported a defect in the walk to the person who answered the phone, was admissible and the absence of proof that the city clerk made a record of the report did not deny the right of the pedestrian, having carried the burden of proof, to recover damages. Ratliff v. City of Great Falls, 132 M 89, 314 P 2d 880.

Notice to the city may be proved "by any method through competent evidence." Ratliff v. City of Great Falls, 132 M 89, 314 P 2d 880, 883.

In an action for personal injuries resulting from fall on defective sidewalk, notice to a former street employee of the city, who had no authority to cause repairs to be made and was not chargeable with responsibility for ascertaining and reporting to those having authority to repair, was not notice to the city. Morris v. City of Deer Lodge, 140 M 157, 369 P 2d 30, 32.

Since this section does not require that actual notice of a defect be pleaded, but does require that it be shown, notice is a matter to be proven at trial. Floyd v. City of Butte, 147 M 305, 412 P 2d 823.

Notice Unnecessary When City Has Knowledge

A "defect" or "obstruction" of which actual notice is required by this section applies only to such as arise and are created without notice, knowledge or permission of the city. Ledbetter v. City of Great Falls, 123 M 270, 213 P 2d 246, 13 ALR 2d 903.

Where plumber obtained license from city for the excavation and installation of a service pipe from street to residence, the city had notice of such excavation at the time of granting such permission, and further notice to city of existence of such excavation was unnecessary to charge city with liability for damage resulting from unguarded excavation. Ledbetter v. City of Great Falls, 123 M 270, 213 P 2d 246, 13 ALR 2d 903.

Parents' Neglect To Give Notice Not Imputable to Child—Child Incapable of Appointing Agent

The neglect of the parents of an injured child to give the notice provided for by this section may not be imputed to the child, and that since under section 64-105, a child is incapable of appointing an agent for any purpose, it is questionable whether the statute can be complied with in that respect by anyone as agent; a child's cause of action for damages for personal injuries is a property right over which, under section 61-110, a parent has no control. Lazich v. Belanger, 111 M 48, 52, 105 P 2d 738.

Plaintiff Must Allege Giving of Notice

Compliance with this section is a necessary prerequisite to plaintiff's right of action, and an appropriate allegation of such compliance is an indispensable part of the statement of a cause of action. Berry v. City of Helena, 56 M 122, 128, 182 P 117.

Purpose of Section

The purpose of this section is to require that notice of any injury arising from a defective sidewalk, street, etc., shall be given to the city, not alone that the city may have an opportunity to examine the place where the injury occurred, and consult those who may be witnesses, but as well to enable the city to settle the claim and avoid the expense of litigation if investigation discloses a legal liability on its part. For this reason it is not sufficient that the city officers had notice of the defect. It is knowledge of the injury which the statute requires shall be brought to the attention of the city authorities. Tonn v. City of Helena, 42 M 127, 133, 111 P 715; Eby v. City of Lewistown, 55 M 113, 122, 173 P 1163, distinguished in 112 M 591, 597, 598, 119 P 2d 629.

A city of this state is one of its governmental agencies, and enjoys such privileges and is subject to such liabilities only as are imposed by law, and when conditions are attached to the enforcement of such liabilities as are imposed upon a city, the latter may rightfully insist upon a strict compliance with the conditions as in case of a notice of injury required by this section. Berry v. City of Helena, 56 M 122, 126, 182 P 117.

This section is not in any sense a statute of limitations, which the municipality may waive or not, as it may choose, but its provisions are intended for the benefit of the public, and the notice prescribed must have been given before any liability whatever attaches. Berry v. City of Helena, 56 M 122, 126, 182 P 117.

The purpose of this section, requiring the giving of notice to a city or town of an injury received because of a defect in a sidewalk as a condition precedent to liability for damages, is to give the city an opportunity to have the place where the accident occurred examined, consult witnesses and to enable it to settle the claim if the investigation discloses a legal liability on its part. Nagle v. City of Billings, 80 M 278, 282, 260 P 717.

The requirement of this section that the notice which one must give to a city before he may maintain an action against it for damages for injuries sustained must contain the time when and the place where the accident occurred, is for the purpose of enabling the city, or its representatives, to examine the place and investigate the question of its liability, if any. Campbell v. City of Helena, 92 M 366, 381, 16 P 2d 1; Lynch v. City of Butte, 99 M 287, 43 P 2d 652.

The purpose of this section is to give knowledge of the injury to the city authorities so that the expense of litigation may be avoided, not alone that the city may have an opportunity to investigate, and it is not sufficient that city officers had notice of the defect. Thompson v. City of Shelby, 136 M 562, 323 P 2d 33, 34, distinguished in 147 M 305, 311, 412 P 2d 823.

Right of Action Exists by Common Law

It is clear that the legislature assumed that a right of action exists against a city but that the failure to give the notice constitutes an exemption from liability. The right of action itself exists by virtue of the common law, but this chapter provides for an exemption from liability; or, as stated by a justice in the concurring opinion in a case cited, "The legislature

seeks to impose a restriction upon a right existing independently of statute." It is merely a statutory condition precedent engrafted on a common-law action. Lazich v. Belanger, 111 M 48, 52, 105 P 2d 738.

Variance Between Description of Place in Notice to City and Proof at Trial—When Immaterial

Where city officials apparently experienced no difficulty in locating the place on a sidewalk at which a pedestrian suffered an injury by falling, from a description thereof in the notice of the accident to the city, the fact that there was a difference of four feet in the place described and that shown by the evidence, did not warrant a nonsuit on the ground of variance; the variance was immaterial. Lynch v. City of Butte, 99 M 287, 290, 43 P 2d 652.

What Is Sufficient Notice

The giving of notice of injury is prima facie sufficient where, upon its face, it purports to have been given, in the plaintiff's behalf, by the attorneys who brought the action for him. McEnaney v. City of Butte, 43 M 526, 533, 117 P 893.

A notice, signed in behalf of the injured person by his attorney, is sufficient under the provisions of this section, the acts of the attorney being presumed to be regular and by authority, especially where the objection to the signature was not made in the trial court. Pullen v. City of Butte, 45 M 46, 55, 121 P 878.

Matter additional to that required by this section to be stated in the notice must be treated as surplusage. Irving v. Town of Stevensville, 51 M 44, 46, 149 P 483.

Where, from the description of the place at which an accident due to a defective sidewalk happened, given in the notice to the city council required by statute, it inferentially, though not in terms, appeared that the injury occurred within the city limits, it was sufficient; the members of the council being presumed to know the limits of their jurisdiction. Murray v. City of Butte, 51 M 258, 264, 151 P 1051.

The notice which must be given a city by one who claims to have sustained personal injuries by reason of a fall upon an ice-covered sidewalk must contain, among other things, an accurate statement of the time when they were received, on giving the time as "on or about" a certain day, when in fact the accident had occurred two days later, not meeting the requirement. Berry v. City of Helena, 56 M 122, 127, 182 P 117.

When a notice of personal injury so designates the place where a pedestrian was injured because of a defect in the sidewalk that the officers of the city or town, as men of common understanding and intelligence, can by the exercise of reasonable diligence find the place, it sufficiently complies with the provisions of this section. Nagle v. City of Billings, 80 M 278, 282, 260 P 717.

Notice served by plaintiff on defendant in pursuance to this section was sufficient, where it stated that the injury occurred "at the corner of Fifth avenue and 32nd street," describing the defect in a gutter covering which caused plaintiff to be thrown to the ground. Nagle v. City of Billings, 80 M 278, 282, 260 P 717.

The provisions of this section as amended, that the "city clerk must make a permanent record of all such reported defects" etc., held not open to the construction that the only way that actual notice could be given was through the city clerk, and offer of proof that plaintiff had talked with the city engineer who had on file written report from the W.P.A. showing faulty condition of sidewalk, held improperly refused. Andrews v. City of Butte, 116 M 69, 72, 147 P 2d 1020.

In an action for damages for injury sustained by a seven-year-old boy who, while on his way home from school at the noon hour, stumbled over loose boards, placed on the sidewalk by a contractor within the previous hour, injuring his knee, held that it could not be contended that when the city issued a building permit to the contractor, it constituted him the city's agent and "actual knowledge" of the contractor was actual knowledge of the city to meet the crux of the lawsuit, i. e., notice under this section, the city not having either actual notice of the lumber being upon the sidewalk or reasonable opportunity to remove it. Lazich v. City of Butte, 116 M 386, 388, 154 P 2d 260, distinguished in 123 M 270, 284, 213 P 2d 246.

When Notice Not Necessary

Where plaintiff sued defendant city for flooding his mine by reason of a defective plan adopted for the construction of a sewer, the cause of injury was not a "defect," within the meaning of this section. Kelly v. City of Butte, 44 M 115, 117, 119 P 171.

This section, requiring, as a condition precedent to the right to maintain an action against a city for damages for injuries to persons on the streets or other enumerated places in the city, a notice of the claim, does not apply in an action where the injury was the result of drinking contaminated city water from which he contracted typhoid fever. (District Judge W. H. Meigs, sitting in place of Mr. Justice Galen, disqualified, dissenting.) Campbell v. City of Helena, 92 M 366, 381, 16 P 2d 1.

This section does not apply in a case where the defective condition is one of ori-

ginal construction. Municipal corporations are chargeable with knowledge of their own acts and those ordered by them. Watson v. City of Bozeman, 117 M 5, 12, 156 P 2d 178.

The 1937 amendment requiring actual notice to the municipality of a defect or obstruction in the street and written notice of the injury caused thereby, that it shall not exempt municipalities from liability for negligence in failing properly to place signs or signals warning of excavations or other obstructions in streets, refers to the whole statute, and hence means that the municipalities shall not be exempt from liability because of lack of either actual notice of defect or written notice of the resulting injury under the specified conditions, so that notice of injury need not be given where such conditions prevail. Green v. City of Roundup, 117 M 249, 250, 157 P 2d 1010.

A complaint seeking to recover from the city for the death of a twelve-year-old bicyclist, on the ground that the city failed to erect a retaining wall or sign warning the public of a drop-off at the end of a street, was not subject to a general demurrer because there was no allegation of the giving of a notice to the city of the time and place where the injury was alleged to have occurred. Maynard v. City of Helena, 117 M 402, 406, 160 P 2d 484.

Where municipality has the duty to inspect sewer systems under its control and supervision, it becomes chargeable with notice of what a reasonable inspection would disclose, so that this section, requiring notice, was not applicable where landowner sought injunctive relief against municipality where faulty sewer was undermining his building. Floyd v. City of Butte, 147 M 305, 412 P 2d 823.

References

Big Head v. United States, 166 F Supp 510, 515.

Collateral References

Municipal Corporations⇐741 (1), 788 (1), 812 (1).

63 C.J.S. Municipal Corporations §§ 824 et seq., 919 et seq.

38 Am. Jur. 385, Municipal Corporations, § 676 et seq.

Persons upon whom notice of injury or claim against municipal corporation may or must be served. 23 ALR 2d 969.

Infancy or incapacity as affecting notice required as condition of holding municipality or other political subdivision liable for personal injury. 34 ALR 2d 725.

Effect of death as result of injury on requirement of notice of claim against municipality. 51 ALR 2d 1128.

Waiver of, or estoppel to assert, failure to give required notice of claim of injury to municipality. 65 ALR 2d 1278.

Claim for contribution or indemnification from another tort-feasor as within provisions of statute or ordinance requiring notice of claim against municipality. 93 ALR 2d 1385.

11-1306. (5080.1) **Nonliability of municipality for injuries caused by accumulations of snow or ice in streets or public ways.** No city or town in this state shall be liable in damages for any negligence or mismanagement on its part, or for any negligence or mismanagement on the part of any officer, agent, servant, or employee of such city or town in causing, permitting or allowing snow or ice to remain or accumulate on or in any road, street, alley, sidewalk, crosswalk, public way, or gutter within said city or town.

History: En. Sec. 1, Ch. 132, L. 1929.

NOTE.—A like section was enacted in 1923 (see chapter 45, Laws 1923). This has been omitted.

Constitutionality

The argument that this section violates section 6, article III of the constitution providing that courts shall be open to every person, and a speedy remedy afforded for every injury of person, etc., because injured person would be deprived of his constitutional right to have a remedy if the abutting owner be not held liable held not meritorious under rule of construction that the constitutional provision refers to such injuries as the law recognizes as actionable. Stewart v. Standard Publishing Co., 102 M 43, 48, 55 P 2d 694.

Construction of Section

This section, relieving municipalities of liability of injury occurring from accumulation of snow and ice on sidewalk does not have the effect of imposing that liability on others. (Citing Childers v. Deschamps, 87 M 505, 290 P 261, 263; Stewart v. Standard Publishing Co., 102 M 43, 55 P 2d 694.) Western Auto Supply Agency of Los Angeles v. Phelan, 104 F 2d 85, 87.

Liability of Abutting Property Owner

In suit against abutting property owner for injuries by a fall on sidewalk from

accumulated ice and snow, held, under rule of liability of person assuming duty of another, that where abutting owner had constructed walk and assumed duty of removing accumulations of ice and snow, he was properly held liable for injuries due to his neglect. Stewart v. Standard Publishing Co., 102 M 43, 49, 55 P 2d 694, distinguished in 104 F 2d 85, 87.

Obstruction of Sidewalk

Where the gravaman of the complaint in a personal injury action against a city was its negligence in permitting the obstruction of a sidewalk compelling plaintiff to go into the street where she fell on an accumulation of snow and ice, defendant city may not in defense rely upon this section, declaring cities and towns not liable in damages for injuries due to snow or ice upon sidewalks or streets. Bensley v. Miles City, 91 M 561, 563, 9 P 2d 168.

References

Childers v. Deschamps, 87 M 505, 518, 290 P 261.

Collateral References

Municipal Corporations⇐770.

63 C.J.S. Municipal Corporations § 811 et seq.

11-1307. (5081) **City warrants—rate of interest.** When any warrant, drawn upon the treasurer of a city or town, pursuant to any ordinance or resolution or direction of the council of such city or town, is presented to the city or town treasurer for payment, and the same is not paid for want of funds, such treasurer must endorse thereon "Not paid for want of funds," annexing the date of presentation, and sign his name thereto; and from that time until such warrant is called for payment the warrant shall bear interest at a rate fixed by ordinance, and not to exceed six per cent per annum.

History: En. Sec. 1, p. 75, L. 1897; re-en. Sec. 3284, Rev. C. 1907; re-en. Sec. 5081, R. C. M. 1921.

References

State ex rel. O'Connor v. McCarthy, 86 M 100, 108, 282 P 1045; Lillis v. City of Big Timber, 103 M 206, 211, 62 P 2d 219.

Collateral References

Municipal Corporations⇐901.

64 C.J.S. Municipal Corporations § 1897.

11-1308. (5082) **Call for payment.** When there are moneys in the city or town treasury applicable to the payment of any warrants drawing interest, sufficient to pay the same, the city or town treasurer must give notice in some newspaper published in such city or town, or if none is published therein, then by written notice posted in a conspicuous place on the outer door of the office of the city treasurer, stating that he is ready to pay the said warrants, and giving the number of the warrants to be paid. From the time of the first publication or posting of such notice the warrants so called shall cease to draw interest.

History: En. Sec. 2, p. 75, L. 1897; re-en. Sec. 3285, Rev. C. 1907; re-en. Sec. 5082, R. C. M. 1921.

Collateral References

Municipal Corporations⇐904 (1).

64 C.J.S. Municipal Corporations § 1900.

11-1309. (5083) **Registry of warrants.** Upon the presentation of any warrant or warrants endorsed, as specified in section 11-1307 of this code, it shall be the duty of the city treasurer to record the same in a book to be provided for that purpose, the date of such presentation, the number and date of the warrant, to whom payable, the fund on which drawn, and the amount thereof, and all warrants to be redeemed, as provided for in the preceding section, shall be redeemed in the order of their registration, beginning with the date of the warrant so first registered.

History: En. Sec. 3, p. 76, L. 1897; re-en. Sec. 3286, Rev. C. 1907; re-en. Sec. 5083, R. C. M. 1921.

Collateral References
Municipal Corporations⇐898.
64 C.J.S. Municipal Corporations § 1894.

References
Lillis v. City of Big Timber, 103 M 206, 211, 62 P 2d 219.

11-1310. Investment of city or town moneys in city or town warrants and approved securities. (1) Except as provided in subsection (2) of this section, whenever the city or town has under its control any moneys, for which there is no immediate demand, in any fund which, in the judgment of the city or town council, it would be advantageous to invest in city or town warrants, the city or town council is authorized in their discretion to direct the city or town treasurer to purchase legally issued city or town general obligation warrants of the same city or town, thereafter issued against funds in which there is not sufficient money to pay such city or town warrants at the time of issuance, and in case of such purchase, the city or town council shall designate the fund or funds, to be so invested, and shall fix the amount thereof, and shall also designate the city or town warrant or warrants which are to be purchased by such funds. The city or town clerk shall thereupon cause to be attached to, or stamped, written or printed upon the warrants so ordered to be purchased a notice to the effect that the city or town will exercise its preference right to purchase such warrant. The city or town treasurer shall thereafter, when such city or town warrant is presented to him, purchase the same out of the proper fund as designated by the city or town council, and the warrant so purchased shall be registered as other city or town warrants, and bear interest as provided by law. When the designated amounts have been invested the city or town treasurer shall notify the city or town clerk.

(2) Whenever the city or town has under its control any moneys realized from the sale of bonds, for which there is no immediate demand, which in the judgment of the city or town council it would be advantageous to invest in any time or savings deposits, United States certificates of indebtedness, United States treasury notes or United States treasury bonds having a maturity date of one (1) year or less, the city or town council is authorized in their discretion to direct the city or town treasurer to make such investments. Interest earned from such investments shall be credited to the bond sinking fund of the city or town.

History: En. Sec. 1, Ch. 31, L. 1961; amd. Sec. 1, Ch. 10, L. 1963.

CHAPTER 14

BUDGET SYSTEM FOR CITIES AND TOWNS

Section 11-1401. Municipal budget law—application—definitions.
11-1402. Fiscal year defined.
11-1403. Estimates of revenues and disbursements to be filed by officers—forms—penalty for failure to file.
11-1404. Tabulation by clerk of expenditure program—classifications, items included in.
11-1405. Consideration of budget by council—notice of budget meeting.

11-1406. Hearings on budget—adoption—fixing of tax levy.
11-1407. Budget appropriations and outstanding warrants.
11-1408. Appropriations—transfers among appropriations—use of borrowed money—liabilities for expenditures in excess of budget.
11-1409. Emergency expenditures—notice and hearing—objections by taxpayers—appeal—notice and hearing dispensed with in extreme cases—emergency warrants—tax levy—lapse of appropriations.
11-1410. Clerk's report of expenditures and liabilities against budget appropriations, receipts from taxes and other sources.
11-1411. State examiner to make rules and regulations for carrying out act—accounting systems.
11-1412. Construction of act.
11-1413. Violation of act constitutes misdemeanor.

11-1401. (5083.1) **Municipal budget law — application — definitions.** The provisions of this act shall apply to all cities in this state, and it may be referred to as the "Municipal Budget Law." As used herein the terms "municipal corporation" or "municipality" shall mean city; the term "council" shall mean city council or city commission; the term "clerk" shall mean the clerk of the city.

History: En. Sec. 1, Ch. 121, L. 1931.

NOTE.—The municipal budget law does not apply to cities operating under the commission-manager form. Attorney General's Opinions, Vol. 15, No. 364.

Construction of Statute

If sections 11-1401 to 11-1413 contain any provisions in direct conflict with sections 11-1832 and 11-1833 prescribing a minimum wage for policemen in cities of the first class, then sections 11-1832 and 11-1833 control as to such conflicts. State ex rel. Gebhardt v. City Council of Helena, 102 M 27, 41, 55 P 2d 671.

References

State ex rel. Helena Housing Authority v. City Council of City of Helena, 108 M 347, 350, 90 P 2d 514.

Collateral References

Municipal Corporations⇐885.
64 C.J.S. Municipal Corporations § 1885.

Home rule charter as affecting supervision, review and revision of tax budget. 106 ALR 1202, 1203.

11-1402. (5083.2) **Fiscal year defined.** The fiscal year of each and every city in this state commences on the first day of July of each year and ends on the last day of June of each year.

History: En. Sec. 2, Ch. 121, L. 1931.

Cross-Reference

Fiscal year, sec. 84-4730.

11-1403. (5083.3) **Estimates of revenues and disbursements to be filed by officers—forms—penalty for failure to file.** (1) On or before the first day of July of each year the clerk of each city shall notify in writing each official, elective or appointive, in charge of an office, department, service or institution of the municipality to file with such clerk, on or before the tenth day of July following, detailed and itemized estimates, both of the probable revenues from sources other than taxation, and of all expenditures required by such office, department, service or institution for the current fiscal year. The council shall submit to the clerk the estimate of expenditures for all purposes for such council. The mayor of the municipality shall submit to the clerk a detailed estimate showing the amount to be appropriated from any funds belonging to the municipality to defray the municipality's portion of the cost of making improvements in special improvement districts, and of maintaining the same, and of installing lighting systems in special lighting districts, and maintaining the same;

but there shall not be included in such estimate, nor in either the preliminary or final budget of any municipality, any part of any such cost which is to be paid by special assessments against the property within such districts, or any part of the cost in sprinkling districts which is to be defrayed by special assessments against the property therein.

(2) The council shall also submit to the clerk detailed estimates of all expenditures for construction or improvement purposes proposed to be made from the proceeds of bond issues not yet authorized and from the proceeds of tax levies which are required to be submitted to and approved at an election to be thereafter held.

(3) The estimates required in this section shall be submitted on forms provided by the clerk, and prescribed by the state examiner, and may only be varied or departed from with permission and approval of said officer. The city treasurer shall prepare the estimates for interest and debt reduction. The clerk shall prepare all other estimates the preparation of which properly falls within the duties of his office.

(4) It shall be the duty of each of said officials to file such estimates within the time and in the manner provided in said form and notice, and the clerk shall deduct and withhold, as a penalty, from the salary or compensation of each official failing or refusing to file such estimates as herein provided, the sum of ten dollars for each day of delay; provided, that the total penalty against any one official shall not exceed fifty dollars ($50.00) in any one year; and provided further, that in the absence or disability of any such official the duties required herein shall devolve upon the official or employee in charge of such office, department, service or institution for the time being. The said notice shall contain a copy of this penalty clause.

History: En. Sec. 3, Ch. 121, L. 1931.

11-1404. (5083.4) **Tabulation by clerk of expenditure program — classifications, items included in.** (1) From such estimates the clerk shall prepare a tabulation showing the complete expenditure program of the municipality for the current fiscal year, and the sources of revenue by which it is to be financed. Such tabulation shall set forth the estimated receipts from all sources other than taxation for each office, department, service, or institution for the current fiscal year, the actual receipts for the last completed fiscal year, the surplus or unencumbered treasury balances at the close of such last fiscal year, and the amount necessary to be raised by taxation; the estimated expenditure for each office, department, service or institution for the current fiscal year, the actual expenditures for the last completed fiscal year, and all contracts or other obligations which will affect the current year revenues.

(2) Such estimates, appropriations and expenditures shall be classified under the general classes of (1) salaries and wages; (2) maintenance and operation; (3) capital outlay; (4) interest and debt redemption; (5) miscellaneous; and (6) expenditures proposed to be made from bond issues not yet authorized, or from the proceeds of a tax levy or levies which are required to be submitted to and approved at an election to be thereafter held.

(3) Within the general class of "salaries and wages" each salary shall be set forth separately together with the title or position of the recipient, provided that an unitemized appropriation may be made to cover the expenses of special deputies or assistants in any office where the services of such special deputies or assistants may be required during a part of the fiscal year only. Wages for day labor may be given in totals by designating the general purpose or object for which the expenditure is to be made but the proposed rate per diem for each class or kind of labor shall be set forth. Expenditures under the general class of "maintenance and operation" shall be classified according to a standard classification to be established by the state examiner. Expenditures for "capital outlay" shall set forth and describe each object of expenditure separately. Under the general class of "interest and debt redemption" proposed expenditures for interest and for redemption of principal shall be set forth separately for each series or issue of bonds, and warrant interest and redemption requirements shall be set forth in a similar manner. Under the general class of "miscellaneous" expenditures for all purposes not listed in, or which cannot properly be assigned to any of the foregoing general classes, shall be set forth and itemized in detail.

(4) The total amount of emergency warrants issued during the preceding fiscal year shall be set forth with the amount issued for each emergency and the amount issued against each fund.

History: En. Sec. 4, Ch. 121, L. 1931.

11-1405. (5083.5) **Consideration of budget by council—notice of budget meeting.** The said tabulation shall be submitted to the council by the clerk on or before the twentieth day of July. Upon receipt thereof the council shall immediately consider the same in detail, and shall on or before the twenty-fifth day of July make any revisions, reductions, additions or changes therein that they deem advisable, and such tabulation, with such revisions, reductions, additions or changes as have been made therein, as herein provided, shall constitute the preliminary budget of the municipality for the fiscal year which it is intended to cover. The council shall then cause a notice to be published stating that said council has completed their preliminary municipal budget for the current fiscal year, and that said budget has been placed on file and is open to inspection in the office of the clerk of the municipality, and that said council will meet on the Wednesday immediately preceding the second Monday in August thereafter, for the purpose of fixing the final budget and making appropriations, designating the time and place when and where such meeting will be held, and that any taxpayer may appear thereat and may be heard for or against any part of said budget. Said notice shall be published at least one time in the official newspaper of the municipality, or if there be none, then in a newspaper of general circulation in the county in which the municipality is situated.

History: En. Sec. 5, Ch. 121, L. 1931.

11-1406. (5083.6) **Hearings on budget—adoption—fixing of tax levy.** (1) On the Wednesday immediately preceding the second Monday in

August the council shall meet at the time and place designated in the notice provided in section 11-1405, at which time any taxpayer may appear and be heard for or against any part of such budget. Such hearing shall be continued from day to day and shall be concluded and terminated and the budget finally approved and adopted on the second Monday in August and prior to the fixing of the tax levies by such council. The council shall have power to call in the official in charge of any office, department, service or institution, at the time the estimates for their respective offices are under consideration, for examination concerning such estimates, and such official shall be called in by such council upon the request of any taxpayer for questioning either by the council or any taxpayer upon such estimates.

(2) Upon the conclusion of such hearing the council shall first determine and fix the amount which it is estimated will accrue to each fund during the fiscal year from all sources, except the taxation of property, but in so doing the council shall not include any amount which it is anticipated may be received during such fiscal year from the payment of taxes which became delinquent during any preceding fiscal year or years. The council shall then determine and fix separately the amount appropriated for and authorized to be expended for each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued for the expenditures so authorized; provided that there shall not be added to the amount to be appropriated and authorized to be expended for any item or purpose, or to the total amount appropriated and authorized to be expended from any fund, other than a fund for the payment of principal or interest on outstanding and unpaid bonds, any amount or percentage whatever because of any anticipated loss of revenue by reason of the nonpayment of taxes levied for such fiscal year; and provided further that the total expenditures authorized to be made from any fund, including reserve added thereto as hereinafter provided, shall not, in any event, exceed the aggregate of the cash balance in such fund, at the close of the fiscal year immediately preceding, in excess of outstanding unpaid warrants against such fund, at the close of the fiscal year immediately preceding, the amount of estimated revenues to accrue to such fund, as determined and fixed in the manner herein provided, and the amount which may be raised for such fund by a lawful tax levy during the fiscal year.

(3) The council shall then determine and fix the amount to be raised for each fund, for which a tax levy is to be made, by adding together the cash balance in excess of outstanding unpaid warrants at the close of the fiscal year immediately preceding and the amount of the estimated revenues, if any, to accrue thereto during the current fiscal year, as before ascertained and determined, and then deducting the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined and fixed by the council in the budget adopted and approved, the amount remaining being the amount necessary to be raised for any fund by tax levy during the current fiscal year; provided that the council may add to the amount so found necessary to be raised for any fund by tax levy during the current fiscal year,

an additional amount, as a reserve to meet and care for expenditures to be made from such fund during the months of July to November, inclusive of the next ensuing fiscal year under the annual budget to be thereafter adopted for such next ensuing fiscal year, but the amount which may be so added to any fund as such reserve shall not exceed one-third (⅓) of the total amount appropriated and authorized to be expended from such fund during the current fiscal year, after deducting from the amount of such appropriations and authorized expenditures the total amount, if any, therein appropriated and authorized to be expended for election expenses and payment of emergency and other outstanding warrants; provided further, that the total amount to be raised by tax levy for any fund during such current fiscal year, including the amount of such reserve, must not exceed the total amount which may be raised for such fund by a tax levy which does not exceed the maximum levy permitted by law to be made for such fund.

(4) The budget as finally determined, in addition to setting out separately each item for which any appropriation is made or expenditure authorized, and the fund out of which the same is to be paid, shall set out the total amount appropriated and authorized to be expended from each fund, the cash balance, in excess of outstanding unpaid warrants, at the close of the last preceding fiscal year, the amount if any, which it is estimated will accrue to the fund from sources other than taxation, the reserve, if any, for the next ensuing fiscal year, and the amount necessary to be raised for each fund by tax levy during the current fiscal year. The council shall then by resolution approve and adopt the budget as so finally determined, and the clerk shall enter the same at length and in detail in the official minutes of the council.

(5) On the second Monday in August, and after the approval and adoption of the final budget, the council shall fix the tax levy for each fund at such rate, not exceeding limits prescribed by law, as will raise the amount set out in the budget as the amount necessary to be raised by tax levy for such fund during the current fiscal year, and no more; provided that the taxable valuation of the city for the then current fiscal year shall be the basis for determining the amount of the tax levy for each fund, and each tax levy shall be at a rate no higher than is required on such basis, without including any amount for anticipated tax delinquency, to raise the amount set out in the budget, and each such levy shall be made in the manner provided by section 84-3802; provided further, that if the council shall consider that a levy made for any bond sinking or interest fund in the manner herein provided, will not provide a sufficient amount to pay all bond and interest becoming due and payable during the current fiscal year, or within six (6) months thereafter, because of anticipated tax delinquency, the council may fix the levy at such rate as it deems necessary to raise the amount for making such payments of principal and interest, over and above such anticipated tax delinquency.

(6) The city clerk shall, not later than the fifteenth day of September following, forward a full, complete, itemized and detailed copy of the final budget, together with the tax levies made therefor, to the state examiner. If any city clerk shall fail, neglect or refuse to forward such copy of the

budget to the state examiner within such time, the state examiner shall, before the first day of October immediately following, notify the mayor and council of such city that such copy of the budget has not been forwarded him by the city clerk, and such council must thereupon withhold from said city clerk his salary or compensation for the month of September until such time as the city clerk shall present such council with a notice from the state examiner that such copy of budget has been received by him.

History: En. Sec. 6, Ch. 121, L. 1931; amd. Sec. 1, Ch. 129, L. 1941.

11-1407. (5083.6A) **Budget appropriations and outstanding warrants.** When, at the end of any fiscal year, any city has outstanding registered emergency warrants against any fund issued by reason of any emergency budget or budgets, and is without sufficient cash in such fund to pay the same with interest thereon, the city council must, in the annual budget for such fund for the immediately following fiscal year, make an appropriation sufficient to pay such warrants with interest thereon.

When, at the end of any fiscal year, any city has warrants outstanding and registered against any fund, other than warrants issued by reason of any emergency budget or budgets, and is without sufficient cash in such fund to pay the same with interest thereon, the city council must, in the annual budget for such fund for the immediately following fiscal year, make an appropriation to pay such warrants, or a substantial part thereof, with the interest thereon. The amount of such appropriation shall be fixed and determined by the city council but must, in any event, be at least ten per centum (10%) of the amount which the levy for the fund will produce, if the amount of such outstanding and registered warrants, with interest thereon, equals or exceeds such amount. None of the provisions of this section shall be construed as authorizing a levy to be made for any fund in excess of the limitation now prescribed by existing law, or acts hereafter enacted amendatory thereof.

History: En. Sec. 1, Ch. 53, L. 1943.

11-1408. (5083.7) **Appropriations—transfers among appropriations—use of borrowed money—liabilities for expenditures in excess of budget.** (1) The estimates of expenditures, itemized and classified as required in section 11-1404, and as finally fixed and adopted by said council, shall constitute the appropriations for the municipality for the fiscal year intended to be covered thereby, and the council and every other municipal official, shall be limited in the making of expenditures or incurring of liabilities to the amount of such detailed appropriations and classifications, respectively; provided that upon a resolution adopted by the council at a regular or special meeting, and entered upon its minutes, transfers or revisions within the general class of "salaries and wages" and of "maintenance and support" may be made, provided, that no salary shall be increased above the amount appropriated therefor. Transfers between the general classes provided in section 11-1404 shall not be permitted, provided and except that in the case of appropriations to be expended from municipal road or bridge funds, any transfer between or among the general

classes of (1) salaries and wages, (2) maintenance and support, and (3) capital outlay, may be made.

(2) Moneys received from borrowings shall be used for no other purpose than that for which borrowed, except that if any surplus remain after the accomplishment of the purpose for which borrowed it shall be used to redeem the municipal debt. Where any budget shall contain an expenditure program to be financed from a bond issue to be authorized thereafter, no expenditure shall be made or obligation incurred thereunder until such bonds have been duly authorized and the proceeds are available, and where any expenditure program is to be financed from a tax levy required to be authorized and approved at an election no expenditure shall be made or obligation incurred thereunder until such levy is so authorized and approved. The authorization of a bond issue by the electors, or by the governing body of the city where an election is not required, shall constitute an appropriation of the bond proceeds to the purpose for which the bonds are authorized, whether or nor such purpose is included in a budget previously adopted, but no warrants shall be drawn, expenditures made or obligations incurred in excess of such appropriation, except pursuant to an additional appropriation included in a budget regularly adopted.

(3) Expenditures made, liabilities incurred, or warrants issued, in excess of any of the budget detailed appropriations as originally determined, or as thereafter revised by transfer, as herein provided, shall not be a liability of the municipality, but the official making or incurring such expenditure or issuing such warrant shall be liable therefor personally and upon his official bond. The council shall not approve any claim, and the clerk shall not issue any warrant for any expenditure in excess of said detailed budget appropriations as finally adopted, or as revised under the provisions hereof, except upon an order of a court of competent jurisdiction, or for an emergency as hereinafter provided. Any municipal officer or officers approving any claim or issuing any warrant in excess of any such budget appropriation, except as above provided, shall forfeit to the city fourfold the amount of such claim or warrant, which shall be recovered in an action against such officer or officers, or all of them, and their several sureties on their official bonds, and it shall be the duty of the city attorney to bring an action therefor in the name of the municipal corporation.

History: En. Sec. 7, Ch. 121, L. 1931; amd. Sec. 1, Ch. 95, L. 1957.

Judgment Debts Excluded from Budget Law

By writ of mandate, respondent city was directed to pay policemen's salaries prescribed by section 11-1832. City's objection that obedience to the writ would compel it to violate the budget act held no defense for, under this section, a court judgment giving rise to a municipal obligation is specifically excepted from the provisions of the budget law. State ex rel. Gebhardt v. City Council of Helena, 102 M 27, 41, 55 P 2d 671.

Collateral References

Municipal Corporations⇐170, 869, 890, 892.

62 C.J.S. Municipal Corporations § 545; 64 C.J.S. Municipal Corporations §§ 1869, 1885, 1889.

11-1409. (5083.8) **Emergency expenditures—notice and hearing—objections by taxpayers—appeal—notice and hearing dispensed with in extreme cases—emergency warrants—tax levy—lapse of appropriations.** (1)

In a public emergency, other than such as are hereinafter specifically described, and which could not reasonably have been foreseen at the time of making the budget, the council, by unanimous vote of the members present at any meeting, the time and place of which all of the members shall have had reasonable notice, shall adopt and enter upon their minutes a resolution stating the facts constituting the emergency and the estimated amount of money required to meet such emergency, and the fund against which emergency warrants shall be drawn, and shall publish the same, together with a notice that a public hearing will be held thereon at the time and place designated therein, but which shall not be less than one (1) week after the date of said publication, at which any taxpayer may appear and be heard for or against the expenditure of money for such alleged emergency. Such resolution and notice shall be published once in the official newspaper of the municipality, and if there be none then in a newspaper of general circulation in the county in which the municipality is situated.

(2) Upon the conclusion of such hearing, if the council shall approve of such emergency expenditure, they shall make and enter upon their official minutes, by unanimous vote of all of the members of the council present at such meeting, an order setting forth the facts constituting such emergency together with the amount of expenditure authorized by them therefor, and the fund against which emergency warrants shall be drawn, which order, so entered, shall be lawful authorization for them to expend such amount, but no more, for such purpose, subject, however, to the following limitations: No expenditure shall be made or liability incurred pursuant to said order until five (5) days, exclusive of the day of entry of said order, shall have elapsed, during which time any taxpayer or taxpayers of said municipality feeling aggrieved by said order may appeal therefrom to the district court for the county in which the municipality is situated, by filing with the clerk of such court a verified petition, a copy of which shall theretofore have been served upon the clerk of said municipality. Said petition shall set forth in detail the objections of the petitioner or petitioners to said order, giving their reasons why the said emergency does not exist. The service and filing of such petition shall operate to suspend such emergency order and the authority to make any expenditure or incur any liability thereunder, until final determination of the matter by the court. Upon the filing of such petition the court shall immediately fix a time for hearing such petition which shall be at the earliest convenient time. At such hearing the court shall hear the matter de novo and may take such testimony as it deems necessary. Its proceedings shall be summary and informal and its determination as to whether an emergency, such as is contemplated within the meaning and provisions of this act, exists or not, and whether the expenditure authorized by said order is excessive or not shall be final.

(3) The total of all emergency budgets and appropriations made therein, in any one (1) year, to be paid from any city fund, shall not exceed twenty-five per centum (25%) of the total amount which could be produced for such city fund by a maximum levy authorized by law to be made for such fund, as shown by the last completed assessment roll of the

county, the term taxable property as used herein means the percentage of the value at which such property is assessed and which percentage is used for the purposes of computing taxes, and does not mean the assessed value of such property as the same appears on the assessment roll.

(4) Upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, epidemic, riot or insurrection, or for the immediate preservation of order or of public health, or for the restoration of a condition of usefulness of any public property the usefulness of which has been destroyed by accident, or for the relief of a stricken community overtaken by calamity, or in settlement of approved claims for personal injuries or property damages, exclusive of claims arising from the operation of any public utility owned by the municipality, or to meet mandatory expenditures required by law, the council may, upon adoption by unanimous vote of all members present at any meeting, the time and place of which all members shall have had reasonable notice, of a resolution stating the facts constituting the emergency, an estimate of the amount required to be expended and the fund against which emergency warrants are to be issued, and entering the same upon their minutes, make the expenditures or incur the liabilities necessary to meet such emergency without further notice or hearing.

(5) All emergency expenditures shall be made by the issuance of emergency warrants drawn against the fund or funds properly chargeable with such expenditures, and the city treasurer is authorized and directed to pay such emergency warrants with any money in such fund or funds available for such purpose, and if, at any time, there shall not be sufficient money available in such fund or funds to pay such warrants, then such warrants shall be registered, bear interest, and be called in for payment in the manner provided by law for other city warrants.

(6) The clerk shall include in his annual tabulation to be submitted to the council the total amount of emergency warrants issued during the preceding fiscal year, and the council shall include in their tax levies a levy for each fund sufficient to raise an amount equal to the total amount of such warrants, if there be any, remaining unpaid at the close of such preceding fiscal year because of insufficient money in such fund to pay the same; provided, however, that no levy shall be made for any fund in excess of the levy authorized by law to be made therefor; and provided, further, that the council may submit the question of funding such emergency warrants at an election, as provided by law, and if at any such election the issuing of such funding bonds be authorized it shall not then be necessary for any levy to be made for the purpose of paying such emergency warrants.

(7) All appropriations, other than the appropriations for uncompleted improvements in progress of construction, shall lapse at the end of the fiscal year; provided that the appropriation accounts shall remain open for a period of thirty (30) days thereafter for the payment of claims incurred against such appropriations prior to the close of the fiscal year and remaining unpaid. After such period shall have expired all appropriations, except as hereinbefore provided regarding uncompleted improvements shall become null and void, and any lawful claim presented there-

after against any such appropriation shall be provided for in the next ensuing budget.

History: En. Sec. 8, Ch. 121, L. 1931; amd. Sec. 2, Ch. 53, L. 1943.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81 (a), Table A.

Where Later Statute Controlling

It is not necessary that the city council should pass upon a resolution authorizing expenditures to meet an emergency by unanimous vote as provided by this section in the matter of authorizing the creation of a city housing authority under section 35-101 et seq., but section 35-104, a part of the housing authorities law, later in point of time and not requiring a unanimous vote, is controlling. State ex rel. Helena Housing Authority v. City Council of Helena, 108 M 347, 351, 90 P 2d 514.

Collateral References

Municipal Corporations⇨885, 891, 897.
64 C.J.S. Municipal Corporations §§ 1885, 1888, 1893.

11-1410. (5083.9) **Clerk's report of expenditures and liabilities against budget appropriations, receipts from taxes and other sources.** At the first meeting of the council, in each month, the clerk shall submit to the council a report showing the expenditures and liabilities against each separate budget appropriation incurred during the preceding calendar month, and like information for the whole of the fiscal year to the first day of the month in which such report is made, together with the unexpended balance of each appropriation. He shall also set forth the receipts from taxes, and in detail the receipts from all other sources by each fund for the same period.

History: En. Sec. 9, Ch. 121, L. 1931.

11-1411. (5083.10) **State examiner to make rules and regulations for carrying out act—accounting systems.** The state examiner is hereby empowered, and it is made his duty to make such rules, regulations and classifications, and prescribe such forms as may be necessary to carry out the provisions of this act, to define what expenditures shall be chargeable to each budget account, and to establish such accounting and cost systems as may be necessary to provide accurate budget information.

History: En. Sec. 10, Ch. 121, L. 1931.

Collateral References

Municipal Corporations⇨879.
64 C.J.S. Municipal Corporations § 1878.

11-1412. (5083.11) **Construction of act.** This act shall not be construed to create any new fund or funds or to authorize a levy to be made for any fund in excess of the limitation now prescribed by existing law or acts amendatory thereof.

History: En. Sec. 11, Ch. 121, L. 1931.

Collateral References

Municipal Corporations⇨870.
64 C.J.S. Municipal Corporations § 1835 et seq.

11-1413. (5083.12) **Violation of act constitutes misdemeanor.** Any person violating any of the provisions of this act shall be guilty of a misdemeanor.

History: En. Sec. 12, Ch. 121, L. 1931.

Collateral References

Municipal Corporations⇨174.
62 C.J.S. Municipal Corporations § 549.

CHAPTER 15

JUDGMENTS—RESPONSIBILITY FOR DAMAGES BY RIOTS

Section 11-1501. Judgments against cities and towns—mode of payment.
11-1502. Judgment may be funded.
11-1503. Cities and towns responsible for damages by mobs and riots.

11-1501. (5084) **Judgments against cities and towns—mode of payment.** On the certificate of a justice of the peace or the clerk of the court in which any judgment is rendered, showing the amount of the judgment and the date of its entry, the council must, by ordinance, direct that the amount of such judgment be paid out of the general fund, and that a warrant issue therefor on the general fund if there is sufficient money therein, exclusive of the appropriations for the current fiscal year, to pay the same, and the council must at the proper times levy and cause to be collected a tax on all the property of the city or town for the payment of such judgment within a period of three years from its presentation, if there is not sufficient money as aforesaid in the general fund to pay the same.

History: En. Sec. 5037, Pol. C. 1895; re-en. Sec. 3486, Rev. C. 1907; re-en. Sec. 5084, R. C. M. 1921. Cal. Pol. C. Sec. 4455.

Methods of Payment

Under sections 11-1501 to 11-1503, the first of which makes it the duty of a city or town council to levy sufficient tax to pay a judgment against the municipality within three years where there is not sufficient money in the general fund to pay it, whereas section 11-1502 authorizes the council to fund the debt if the judgment exceeds $10,000, the board of councilmen is vested with discretionary power to proceed in any of the several methods of procedure prescribed, and may therefore not be compelled by the judgment creditor, through writ of mandate, to make a specific levy for any one year to satisfy the judgment. State ex rel. North American Life Ins. Co. v. District Court, 97 M 523, 525, 37 P 2d 329.

Statute of Limitation Not on Right To Enforce but Imposed because of Failure To Enforce

This statute places a limitation upon the discretionary period, and is not a statute of limitation with respect to the right to enforce the judgment. The bar of the statute of limitations is imposed because of the failure of the possessor of a right to enforce it. "Such a statute may be used as a shield, but not as a sword." State ex rel. North American Life Ins. Co. v. District Court, 100 M 476, 479, 49 P 2d 1119.

When Writ of Mandate Denied

During the three-year period provided by this section for the payment of a judgment against a city or town, the council may not be coerced to make payment by writ of mandate. State ex rel. North American Life Ins. Co. v. District Court, 100 M 476, 479, 49 P 2d 1119.

Collateral References

Municipal Corporations⇨897, 964.
64 C.J.S. Municipal Corporations §§ 1893, 1997.

11-1502. (5085) **Judgment may be funded.** If any judgment rendered against any town or city exceeds the sum of ten thousand dollars, the council may fund the same as other indebtedness against the city or town is funded.

History: En. Sec. 5038, Pol. C. 1895; re-en. Sec. 3487, Rev. C. 1907; re-en. Sec. 5085, R. C. M. 1921.

Discretion in Council

Where a money judgment against a town in excess of $10,000 is outstanding, the town council is, under this section and section 11-1501, during a period of three years, vested with discretionary power to either levy a tax where there are insufficient funds in the general fund, or fund the debt. State ex rel. North American Life Ins. Co. v. District Court, 100 M 476, 479, 49 P 2d 1119.

Methods of Payment

Under section 11-1501 and section 11-1502, the first of which makes it the duty of a city or town council to levy a suffi-

cient tax to pay a judgment against the municipality within three years where there is not sufficient money in the general fund to pay it, whereas section 11-1502 authorizes the council to fund the debt if the judgment exceeds $10,000, the board of councilmen is vested with discretionary power to proceed in any of the several methods of procedure prescribed, and may therefore not be compelled by the judgment creditor, through writ of mandate, to make a specific levy for any one year to satisfy the judgment. State ex rel. North American Life Ins. Co. v. District Court, 97 M 523, 526, 37 P 2d 329.

Collateral References

Municipal Corporations⇐951.

64 C.J.S. Municipal Corporations §§ 1953, 1954.

11-1503. (5086) **Cities and towns responsible for damages by mobs and riots.** Every city or town is responsible for injuries to real or personal property within its corporate limits, done or caused by mobs or riots.

History: En. Sec. 5036, Pol. C. 1895; re-en. Sec. 3485, Rev. C. 1907; re-en. Sec. 5086, R. C. M. 1921. Cal. Pol. C. Sec. 4452.

NOTE.—See section 94-5314 for liability of officers neglecting to perform duties to suppress unlawful or riotous assembly.

Cross-Reference

Time for commencement of actions, sec. 93-2608.

Purpose of Section

The sole purpose of this section was to create a liability which did not exist at common law, and to impose a new burden upon municipal corporations. It does not indicate a legislative intent to exempt cities from liability for all other torts than those mentioned therein. May v. City of Anaconda, 26 M 140, 142, 66 P 759.

The purpose of this statute is not only to create municipal liability, but to instill in the minds of every person liable to contribute to the public expense, a will to discourage violence and to stimulate effort to preserve public safety. Butte Miners' Union v. City of Butte, 58 M 391, 401, 194 P 149.

Right of Owner To Protect Property

The bare fact that the plaintiff labor union had stored arms and ammunition in its building to protect its property and the lives of its members was not alone sufficient to defeat its right to recover damages, since the right to protect property and to bear arms in defense of person and property is guaranteed by the constitution. Butte Miners' Union v. City of Butte, 58 M 391, 401, 194 P 149.

Unlawful Conduct of Property Owner

The liability of a city for damages to property through riots or mobs is absolute, except where the plaintiff owner by his own unlawful conduct induced the injury for which he seeks damages, in which event he cannot recover. Butte Miners' Union v. City of Butte, 58 M 391, 401, 194 P 149.

References

Annala v. McLeod, 122 M 498, 206 P 2d 811, 815.

Collateral References

Municipal Corporations⇐740 (1).

63 C.J.S. Municipal Corporations § 773.

CHAPTER 16

JUDICIAL POWERS—POLICE COURTS

Section 11-1601. Police court established.
11-1602. Jurisdiction of police courts.
11-1603. Jurisdiction for violation of ordinances, and civil and criminal jurisdiction.
11-1604. When judge cannot act.
11-1605. Preliminary examinations—proceedings in.
11-1606. Proceedings in criminal actions.
11-1607. Proceedings in civil actions.
11-1608. Prosecution by city attorney.

11-1601. (5087) **Police court established.** A police court is established in each city or town, which court must always be open, except upon nonjudicial days, and upon such days it may transact criminal business only.

History: En. Sec. 4910, Pol. C. 1895; re-en. Sec. 3296, Rev. C. 1907; re-en. Sec. 5087, R. C. M. 1921.

Limited Jurisdiction

Police courts, like justices' courts, are courts of limited jurisdiction and have

only such authority as is expressly conferred upon them. State ex rel. Marquette v. Police Court, 86 M 297, 308, 283 P 430.

References

State ex rel. City of Butte v. District Court, 37 M 202, 204, 95 P 841; Grant v. Williams, 54 M 246, 251, 169 P 286; Shampagne v. Keplinger, 78 M 114, 119, 252 P 803; State ex rel. Ryan v. Norby, 118 M 283, 165 P 2d 302, 303.

Collateral References

Courts⇨41.
21 C.J.S. Courts §§ 120, 134, 138.

11-1602. (5088) **Jurisdiction of police courts.** The police court has concurrent jurisdiction with the justice of the peace of the following public offenses committed within the county:

1. Petit larceny.

2. Assault and battery, not charged to have been committed upon a public officer in the discharge of his official duty, or with intent to kill.

3. Breaches of the peace, riots, affrays, committing willful injury to property, and all misdemeanors punishable by fine not exceeding five hundred dollars ($500), or by imprisonment not exceeding six (6) months, or by both fine and imprisonment.

4. Proceedings respecting vagrants, lewd, or disorderly persons. Such offenses must be prosecuted in the name of the state of Montana.

5. Possession of beer or liquor by persons under the age of twenty-one (21) years in violation of section 94-35-106.2, R.C.M. 1947.

6. Selling, giving away or disposing of intoxicating liquor to minors in violation of section 94-35-106, R.C.M. 1947.

Said police court shall have no jurisdiction of any civil cause, except as provided in the next section.

History: En. Sec. 4911, Pol. C. 1895; amd. Sec. 1, Ch. 16, L. 1903; re-en. Sec. 3297, Rev. C. 1907; re-en. Sec. 5088, R. C. M. 1921; amd. Sec. 1, Ch. 93, L. 1967. Cal. Pol. C. Sec. 4426.

Construction of Statute

This section and section 11-1605 merely confer jurisdiction upon the police court or judge in the cases and proceedings enumerated; the compensation to which he is entitled is provided for elsewhere in the code. State ex rel. Rowe v. District Court, 44 M 318, 322, 119 P 1103.

References

In re Graye, 36 M 394, 397, 93 P 266; State ex rel. City of Butte v. District Court, 37 M 202, 204, 95 P 841; State ex rel. Rowe v. District Court, 45 M 205, 208, 122 P 270; Grant v. Williams, 54 M 246, 251, 169 P 286; Shampagne v. Keplinger, 78 M 114, 119, 252 P 803; State ex rel. Marquette v. Police Court, 86 M 297, 308, 283 P 430.

Collateral References

Criminal Law⇨90 (2).
22 C.J.S. Criminal Law § 125.

DECISIONS UNDER FORMER LAW

Misdemeanors

A justice of the peace had jurisdiction under this section, as it existed prior to 1903 amendment, over misdemeanors committed in a town or city within his township. In re Ryan, 20 M 64, 67, 50 P 129.

11-1603. (5089) **Jurisdiction for violation of ordinances, and civil and criminal jurisdiction.** The police court also has exclusive jurisdiction:

1. Of all proceedings for the violation of any ordinance of the city or town, both civil and criminal, which must be prosecuted in the name of the city or town;

2. Of any action for the collection of taxes and assessments levied for city or town purposes; or for the erection or improvement of public build-

ings; for the laying out, or opening, or improving any public street or sidewalk, alley, or bridge; or for the purpose of or the improvement of any public grounds; or for any and all public improvements made or ordered by the city or town within its limits, when the amount of the tax or assessments sought to be collected against the person assessed does not exceed three hundred dollars; but no lien upon the property taxed or assessed for the nonpayment of the taxes or assessment can be foreclosed in any such action;

3. Of an action for the collection of money due to the city or town or from the city or town to any person, when the amount sought to be collected, exclusive of interest and costs, does not exceed three hundred dollars;

4. For the breach of any official bond given by any city or town officer, and for the breach of any contract, and any action for damages in which the city or town is a party, or is in any way interested; and all forfeited recognizances given to or for the benefit or in behalf of the city or town; and upon all bonds given upon any appeal taken from the judgment of the court in any action above-named, where the amount claimed, exclusive of costs, does not exceed three hundred dollars;

5. For the recovery of personal property belonging to the city or town, when the value of the property (exclusive of the damages for the taking or detention) does not exceed three hundred dollars; and,

6. Of an action for the collection of any license required by any ordinance of the city or town.

History: En. Sec. 4912, Pol. C. 1895; re-en. Sec. 3298, Rev. C. 1907; re-en. Sec. 5089, R. C. M. 1921. Cal. Pol. C. Sec. 4427.

NOTE.—For history of earlier acts see State ex rel. Rowe v. District Court, 45 M 205-209, 122 P 270.

Defect in Complaint

The mere fact that an action for the violation of a city ordinance was entitled in the name of the "town" of H, whereas in the body of the complaint it was alleged that defendant had violated an ordinance of the named city, did not deprive the police court of jurisdiction; such a defect being curable by amendment prior to trial halted by application for writ of prohibition. State ex rel. Moreland v. Police Court, 87 M 17, 21, 285 P 178.

Exclusive Jurisdiction

A justice of the peace, designated by the town council to act as police judge, has exclusive jurisdiction of all cases arising under the ordinances, in addition to his jurisdiction as a justice. State ex rel. Streit v. Justice Court, 45 M 375, 380, 123 P 405.

False Imprisonment

A police magistrate had jurisdiction to determine the validity of a town ordinance for a violation of which he sentenced plaintiff in an action for false imprisonment to serve a term in the county jail. Shampagne v. Keplinger, 78 M 114, 119, 252 P 803.

Limited Jurisdiction

Police courts, like justices' courts, are courts of limited jurisdiction and have only such authority as is expressly conferred upon them. State ex rel. Marquette v. Police Court, 86 M 297, 283 P 430.

Prosecution in Name of Municipality

Prosecutions for violations of local ordinances must be conducted in the name of the municipality. State ex rel. Streit v. Justice Court, 45 M 375, 380, 123 P 405.

Removal of Snow and Ice

Noncompliance with an ordinance, making it the duty of an occupant of premises within the limits of a city to keep a sidewalk free from snow and ice, is not in its essence a crime or misdemeanor, and actions arising therefrom are properly prosecuted in the name of the city. City of Helena v. Kent, 32 M 279, 290, 80 P 258; State ex rel. Streit v. Justice Court, 45 M 375, 381, 123 P 405. See also State ex rel. City of Butte v. District Court, 37 M 202, 206, 95 P 841.

Vagrancy

The police court of a city or town has exclusive jurisdiction of all proceedings for

the violation of an ordinance defining vagrancy and prescribing punishment for such offense and prosecutions thereunder must be conducted in the name of the city. State ex rel. City of Butte v. District Court, 37 M 202, 208, 95 P 841.

Police courts have concurrent jurisdiction with justices' courts to punish vagrancy as a crime against the state, and such prosecutions must be instituted and conducted in the name of the state. State ex rel. City of Butte v. District Court, 37 M 202, 208, 95 P 841.

References

State ex rel. Rowe v. District Court, 45 M 205, 208, 209, 122 P 270; Grant v. Williams, 54 M 246, 251, 169 P 286.

Collateral References

Courts⇨188 (1) et seq.; Criminal Law ⇨90 (1).

21 C.J.S. Courts § 249 et seq.; 22 C.J.S. Criminal Law § 125.

11-1604. (5090) **When judge cannot act.** In all cases in which the judge is a party, or in which he is interested, or when he is related to either party by consanguinity or affinity within the sixth degree, and in case of his sickness, absence, or inability to act, the police judge or mayor may call in a justice of the peace residing in the city or town to act in his place and stead.

History: En. Sec. 4913, Pol. C. 1895; re-en. Sec. 3299, Rev. C. 1907; re-en. Sec. 5090, R. C. M. 1921. Cal. Pol. C. Sec. 4428.

Collateral References

Judges⇨15 (1).

48 C.J.S. Judges § 101.

11-1605. (5091) **Preliminary examinations—preceedings in.** Proceedings in preliminary examinations in criminal actions in the police court must be had in conformity with the provisions of sections 94-6101 to 94-6125.

History: En. Sec. 4914, Pol. C. 1895; re-en. Sec. 3300, Rev. C. 1907; re-en. Sec. 5091, R. C. M. 1921.

Compiler's Note

Sections 94-6101 to 94-6125, referred to in this section, were repealed by Sec. 2, Ch. 196, Laws 1967. For present law relating to preliminary examination see secs. 95-1201 to 95-1204.

References

State ex rel. Rowe v. District Court, 44 M 318, 322, 119 P 1103.

Collateral References

Criminal Law⇨230 et seq.

22 C.J.S. Criminal Law § 337 et seq.

11-1606. (5092) **Proceedings in criminal actions.** Proceedings in police courts in criminal actions triable in such courts are regulated by sections 94-100-1 to 94-100-46.

History: En. Sec. 4915, Pol. C. 1895; re-en. Sec. 3301, Rev. C. 1907; re-en. Sec. 5092, R. C. M. 1921. Cal. Pol. C. Sec. 4431.

Compiler's Note

Sections 94-100-1 to 94-100-46, referred to in this section, were repealed by Sec. 2, Ch. 196, Laws 1967. For present law, see Tit. 95, chs. 16 and 20.

References

City of Miles City v. Drum, 60 M 451, 452, 199 P 719; State ex rel. Marquette v. Police Court, 86 M 297, 308, 283 P 430.

Collateral References

Criminal Law⇨247 et seq.

22 C.J.S. Criminal Law § 367 et seq.

11-1607. (5093) **Proceedings in civil actions.** The proceedings of the police court in civil actions are regulated by sections 93-7801 to 93-7804 of the code.

History: En. Sec. 4916, Pol. C. 1895; re-en. Sec. 3302, Rev. C. 1907; re-en. Sec. 5093, R. C. M. 1921. Cal. Pol. C. Sec. 4432.

Collateral References

Courts⇨189 (1) et seq.

21 C.J.S. Courts § 249 et seq.

11-1608. (5094) **Prosecution by city attorney.** The city attorney must prosecute all cases for the violation of any ordinance, and prosecute, con-

duct, and control all proceedings in cases mentioned in section 11-1603 of this code, both in the police court and on appeal therefrom to the district court.

History: En. Sec. 4917, Pol. C. 1895; re-en. Sec. 3303, Rev. C. 1907; re-en. Sec. 5094, R. C. M. 1921.

Prosecution Conducted in Name of Municipality

Prosecutions for violations of local ordinances must be conducted in the name of the municipality, and by its prosecuting officer. State ex rel. Streit v. Justice Court, 45 M 375, 380, 123 P 405.

Collateral References

Municipal Corporations⇐635, 1026.

CHAPTER 17

MUNICIPAL COURTS

Section 11-1701. Municipal courts—cities where creation authorized—adoption of provisions concerning.
11-1702. Jurisdiction.
11-1703. Election of judges—term of office.
11-1704. Qualifications and salary.
11-1705. Courtroom and supplies.
11-1706. Clerk—records—seal.
11-1707. Officers.
11-1708. Sessions of the court.
11-1709. Actions—how commenced—pleadings.
11-1710. Summons—time for answer.
11-1711. Practice—reply.
11-1712. Judgments.
11-1713. Disqualification of judges.
11-1714. Costs.
11-1715. Jury trial.
11-1716. Police judge abolished.
11-1717. Appeals.
11-1718. Fees.
11-1719. General powers of judge.
11-1720. Termination of office of police judge.

11-1701. (5094.1) **Municipal courts—cities where creation authorized—adoption of provisions concerning.** There is hereby created in all cities in the state of Montana with a population of twenty thousand (20,000) or more persons, according to the last federal census, a court to be known and designated as municipal court of the city of (designating the name of the city) of the state of Montana. Such court shall be a court of record; provided, however, that the provisions of this act shall apply only after the governing body or council of such city or cities shall have elected by a two-thirds majority vote to adopt the provisions hereof by ordinance and in said ordinance shall have provided the manner of, and time at which, said municipal court shall be established. Said ordinance shall be consistent with the provisions of this act.

History: En. Sec. 1, Ch. 177, L. 1935.

Collateral References

Courts⇐41.
21 C.J.S. Courts §§ 120, 134, 138.

11-1702. (5094.2) **Jurisdiction.** Said court shall have jurisdiction coordinate and coextensive with the justice courts of the county wherein said city is located, and shall also, in addition thereto, have exclusive original jurisdiction of all actions and proceedings, both civil and crim-

inal, mentioned and provided for in section 11-1603, from and after the first Monday in May, 1937. Such municipal court shall also have concurrent jurisdiction with the district court within their respective counties in forcible entry and unlawful detainer.

History: En. Sec. 2, Ch. 177, L. 1935.

Collateral References
Courts⇨188 (1) et seq.
21 C.J.S. Courts § 249 et seq.
20 Am. Jur. 2d 449, Courts, § 87 et seq.

11-1703. (5094.3) **Election of judges—term of office.** There shall be elected at the general city election in the year 1936 in all cities with a population of twenty thousand (20,000) and over, one judge of municipal court. The term of such judge so elected shall commence on the first Monday in May, 1936, and terminate on the first Monday in May, 1938. Thereafter, judges of municipal courts shall be elected at the general city elections in all even-numbered years. Such judges shall hold office for the term of two years from the first Monday of May in the year in which they are elected and until their successor is elected and qualified. All elections of municipal judges shall be under and governed by the laws applicable to the election of city officials, except that the names of candidates for municipal judge shall be placed on the ballot to be used at such election without any party designation or any statement, measure or principle which the candidate advocates or any slogan after his name.

History: En. Sec. 3, Ch. 177, L. 1935.

Collateral References
Judges⇨3, 7.
48 C.J.S. Judges §§ 12, 13, 19-22.

11-1704. (5094.4) **Qualifications and salary.** Municipal judges shall have the same qualifications as judges of the district court and must be a resident and voter in the city for which he is elected at the time of his election. The salary of such judges shall be three thousand ($3,000.00) dollars annually, payable monthly by the city treasurer of the city in which such court is.

History: En. Sec. 4, Ch. 177, L. 1935.

Collateral References
Judges⇨4, 22 (5).
48 C.J.S. Judges §§ 14-18, 36.

11-1705. (5094.5) **Courtroom and supplies.** A room for such court, with necessary furniture, fixtures and supplies, shall be provided by the county wherein said city is located.

History: En. Sec. 5, Ch. 177, L. 1935.

Collateral References
Courts⇨72.
21 C.J.S. Courts § 166.

11-1706. (5094.6) **Clerk—records—seal.** The city clerk of the city in which said court is located shall be ex officio clerk of such court, and the records of such court shall be kept by such clerk; and such records in civil causes shall conform as nearly as possible to the records of district courts. Said court shall have and use a seal, which seal shall be similar to the seal of the district court, except as to the name of the court. In criminal causes and in cases arising under city ordinances and section 11-1603, the records shall be similar to the records now kept in justice court.

History: En. Sec. 6, Ch. 177, L. 1935.

Collateral References

Clerks of Courts⚖2; Courts⚖113.
14 C.J.S. Clerks of Courts § 2; 21 C.J.S. Courts §§ 226, 228, 229.

11-1707. (5094.7) **Officers.** The chief of police of the city shall be the executive officer of such court. He shall serve all process and execute all orders of the court, either in person or by subordinate police officer who shall execute process in his name. The chief of police, with the approval of the judge, shall appoint one or more policemen as court officers, one of whom shall attend the sessions of the court and perform all duties in connection therewith which the judge may require.

History: En. Sec. 7, Ch. 177, L. 1935.

Collateral References

Municipal Corporations⚖182.

11-1708. (5094.8) **Sessions of the court.** Such court shall be in continuous session from 10:00 o'clock a.m. to 4:00 o'clock p.m. on every judicial day or such other hours as the judge thereof may designate, except that, during the time when the district court of the county in which said municipal court is located is in session, the municipal judge may in his discretion suspend court.

History: En. Sec. 8, Ch. 177, L. 1935.

Collateral References

Courts⚖75.
21 C.J.S. Courts §§ 148, 162.

11-1709. (5094.9) **Actions—how commenced—pleadings.** In all civil causes the provisions of sections 93-3001 to 93-3910, inclusive, are hereby adopted and made applicable to actions and pleadings in municipal court, except where said provisions are inapplicable and where it is otherwise provided herein.

History: En. Sec. 9, Ch. 177, L. 1935.

Compiler's Note

A majority of the sections, included in the reference in this section to sections 93-3001 to 93-3910, have been repealed and are now covered by the Montana Rules of Civil Procedure.

Collateral References

Courts⚖189 (1) et seq.
21 C.J.S. Courts § 249 et seq.

11-1710. (5094.10) **Summons—time for answer.** Summons in municipal court shall be signed by the clerk and shall conform as near as may be to the provisions of section 93-3003, except that the time for answering shall be ten days, instead of twenty.

History: En. Sec. 10, Ch. 177, L. 1935.

Compiler's Note

Section 93-3003, referred to in this section, was repealed by Sec. 84, Ch. 13, Laws 1961. For new provisions, see M. R. Civ. P., Rules 4 and 12 (a).

11-1711. (5094.11) **Practice—reply.** The provisions of sections 93-6901 to 93-7405, inclusive, and sections 93-7701 to 93-7714, inclusive, are hereby adopted and made applicable to practice and procedure in municipal court, except where the same are repugnant to the provisions of this act. The words "Municipal Court" being substituted for justice court, and "judge" for justice of the peace where the same appears in said chapters. Where the answer contains a counterclaim or any new matter, the plaintiff, if he does not demur, shall within five days after the service and

filing of the answer, reply to such counterclaim or new matter in the manner and form provided for in section 93-3601.

History: En. Sec. 11, Ch. 177, L. 1935.

Compiler's Note

Section 93-3601, referred to in this section, was repealed by Sec. 84, Ch. 13, Laws 1961. For new provision, see M. R. Civ. P., Rule 12 (b).

11-1712. (5094.12) **Judgments.** In civil causes judgments in municipal court shall be made and entered as in district court and shall be of like tenor and effect.

History: En. Sec. 12, Ch. 177, L. 1935.

11-1713. (5094.13) **Disqualification of judges.** The provisions of law applicable to disqualification of judges of district court shall apply to judges of municipal court. When a judge of municipal court has been disqualified or is sick or unable to act, he shall call in some practicing attorney at law of the county in which said court is located, who shall be judge pro tem with the same powers for the purposes of such cause as the judge of said court.

History: En. Sec. 13, Ch. 177, L. 1935.

Collateral References

Judges⇐15 (1), 39 et seq.

48 C.J.S. Judges §§ 72, 74, 77, 90, 91, 97, 101.

20 Am. Jur. 2d 433, Courts, § 68; 30 Am. Jur. 767, Judges, § 53 et seq.

Residence of judge in political subdivision interested in suit. 33 ALR 1322.

Necessity as justifying action by judge otherwise disqualified to act in particular case. 39 ALR 1476.

Disqualification of judge or one acting in judicial capacity to preside in a case in which he has a pecuniary interest in the fine, penalty, or forfeiture imposed upon the defendant. 50 ALR 1256.

Right of judge not legally disqualified to decline to act in legal proceeding upon personal grounds. 96 ALR 546.

Disqualification of judge by relative's ownership of stock in corporation which is party to action or proceeding. 110 ALR 472.

11-1714. (5094.14) **Costs.** The same costs shall be allowed as are allowed in justice courts and shall be taxed and retaxed as in district court, twenty-four hours being allowed for filing memorandum of costs.

History: En. Sec. 14, Ch. 177, L. 1935.

Collateral References

Costs⇐9.

20 C.J.S. Costs § 264.

11-1715. (5094.15) **Jury trial.** In civil causes and criminal causes arising under the state law, either party shall be entitled to a jury trial, as provided in justice courts, except that the police officer shall perform the duties thereto prescribed to the sheriff or constable.

History: En. Sec. 15, Ch. 177, L. 1935.

Collateral References

Jury⇐11 (1).

50 C.J.S. Juries § 12.

11-1716. (5094.16) **Police judge abolished.** In cities in which a municipal court is established the office of police judge is hereby abolished.

History: En. Sec. 16, Ch. 177, L. 1935.

Collateral References

Courts⇐41.

21 C.J.S. Courts §§ 120, 134, 138.

11-1717. (5094.17) **Appeals.** An appeal shall lie to the district court of the county in which the municipal court is established as from a judgment of justice court or police court, and the provisions of law applicable to such appeals shall apply and are hereby adopted. When the amount in controversy is less than one hundred ($100.00) dollars there shall be no appeal, unless the municipal judge shall certify that a doubtful question of law is involved upon which a final decision is desirable.

History: En. Sec. 17, Ch. 177, L. 1935.

Collateral References
Courts⊂⇒190 (1), (2).
21 C.J.S. Courts § 279.

11-1718. (5094.18) **Fees.** The fees in municipal court shall be the same as the fees provided by law for justice court, and all fees collected by such court shall be paid into the city treasury.

History: En. Sec. 18, Ch. 177, L. 1935.

Collateral References
Costs⊂⇒146.
20 C.J.S. Costs § 184.

11-1719. (5094.19) **General powers of judge.** Except as otherwise provided by this chapter, the municipal court shall have in matters within its jurisdiction all the powers and duties of district judges in like cases, and the proceedings and practice therein shall be the same as in district court. The court may make and alter rules for the conduct of its business and prescribe forms of process conformable to law.

History: En. Sec. 20, Ch. 177, L. 1935.

Collateral References
Courts⊂⇒188 (1).
21 C.J.S. Courts § 249.

11-1720. (5094.20) **Termination of office of police judge.** The term of the police judge next elected or holding office in cities affected by this act shall terminate on the first Monday in May, 1937, and the office of police judge shall cease to exist in said city after such date.

History: En. Sec. 21, Ch. 177, L. 1935.

Collateral References
Judges⊂⇒7.
48 C.J.S. Judges §§ 20-22.

CHAPTER 18

POLICE DEPARTMENT, METROPOLITAN POLICE LAW

Section 11-1801. Police department.
11-1802. Mayor or in those cities operating under the commission-manager plan, the manager thereof, to have charge of police department.
11-1803. Terms of members of police force.
11-1804. Police commission required in first and second class cities—other cities and towns may provide for commission by ordinance.
11-1804.1. Third class cities—appointment of commission upon request of policemen—procedure for discharge of policemen.
11-1805. Examination of applicants for position on police force.
11-1806. Presentation and trial of charges against policemen.
11-1807. Active and eligible lists of policemen—filling vacancies—limitation of eligible list.
11-1808. Positions on police force—reinstatement.
11-1809. Rights upon reinstatement.
11-1810. Exemptions of members of police force.

11-1811. Members of the police department not to take part in political conventions.
11-1812. Prohibited from soliciting for votes.
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11-1815. Salary of chief of police.
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11-1817. Age restriction on policemen—not applicable to veterans, present members and police reserves.
11-1818. Police reserves—qualifications.
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11-1821. Payment of police reserves.
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11-1827. Investment of fund.
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11-1830. Limit of use of fund.
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11-1832. Minimum wage of police in first and second class cities.
11-1832.1. Basis in computing added salary.
11-1833. Application of act.
11-1834. Annual state payments to municipality with police department.
11-1835. State payments to come from motor vehicle insurance premium tax.
11-1836. Credit of payments to reserve fund of police retirement system—annual report of board.
11-1837. Expenditure of funds by municipality not having police retirement system—annual report of treasurer.

11-1801. (5095) **Police department.** There shall be in every city and town of this state a police department which shall be organized, managed and controlled as in this chapter provided, which chapter shall in all respects be applicable to and shall govern and control police departments in every such city or town organized under any form of municipal government save and except where this act is in conflict with the commission form of government, provided for in sections 11-3101 to 11-3137, and amendments thereto; and where the provisions of this act do conflict with the provisions of said chapter and the amendments thereto pertaining to the commission form of government, then the provisions pertaining to the commission form of government shall prevail.

History: En. Sec. 1, Ch. 136, L. 1907; Sec. 3304, Rev. C. 1907; re-en. Sec. 5095, R. C. M. 1921; amd. Sec. 1, Ch. 152, L. 1947; amd. Sec. 1, Ch. 72, L. 1949.

Compiler's Note

Section 11-3124, contained in the reference in this section to sections 11-3101 to 11-3137, was repealed by Sec. 11, Ch. 67, Laws 1967. For present law, see secs. 6-601 to 6-608.

Appointment of Policemen in Third Class City

Where a city had not elected to come under the provisions of the Metropolitan Police Law, it was not bound by any of the provisions thereof and was not prohibited from appointing a policeman who had not been a resident for six months. McBroom v. City of Polson, 137 M 33, 349 P 2d 1023.

Construction of Statute

The legislature, in enacting the "Police commission bill," employing, as it did, many expressions which are exclusive in their meaning, intended to supplant all existing legislation as to the mode of constituting the police departments of cities,

and to put all members thereof under civil service rules. State ex rel. Wynne v. Quinn, 40 M 472, 478, 107 P 506.

Department Cannot Be Abolished

The police force cannot be abolished as a whole, for, under this section, the city is required to maintain it; nor can it be abolished in part; the power of the city extends only to a reduction in its numbers for economical reasons, and it must be exercised in good faith. State ex rel. Quintin v. Edwards, 40 M 287, 306, 106 P 695.

Duty To Maintain Adequate Force

A municipality has the duty to maintain an adequate police force and, it follows, the duty to preserve order, and in performing that duty the municipality is performing a governmental function. Kingfisher v. City of Forsyth, 132 M 39, 314 P 2d 876, 879.

Liability of City for Tortious Act of City Policeman

A city is not liable for tortious acts of a city policeman committed while acting within the course and scope of his employment in enforcing the laws and ordinances of a city. Kingfisher v. City of Forsyth, 132 M 39, 314 P 2d 876, 878.

Mandatory as to First and Second Class Cities

The Metropolitan Police Law, placing the police department under civil service rules, was mandatory as to cities of the first class, prior to 1939 amendment, but was left optional with the authorities of the smaller cities and towns whether they shall bring themselves within its provisions. State ex rel. Buckner v. Mayor of Butte, 41 M 377, 382, 109 P 710; Grush v. Bishop, 46 M 97, 101, 126 P 619, explained in 137 M 33, 35, 349 P 2d 1023.

As to cities of the first and second classes, the Metropolitan Police Law is mandatory, but, as to other cities and towns, it is permissive only. McBroom v. City of Polson, 137 M 33, 349 P 2d 1023, 1024.

Since provisions of the Metropolitan Police Law are mandatory on cities of the first and second class, where newly passed city ordinance required police officers to serve continuously on the active list for not less than thirty years before being eligible for retirement, the ordinance was in direct conflict with sections 11-1818 and 11-1821 and invalid. Bartels v. Miles City, 145 M 116, 399 P 2d 768.

Other Offices

The Metropolitan Police Law contemplates that in addition to the office of chief of police, which the act itself creates, there shall be different grades and other offices established by the city council, as indicated in section 11-1813, or by the mayor in the event the council fails to act, as shown by section 11-1802. State ex rel. Dwyer v. Duncan, 49 M 54, 58, 140 P 95.

Purpose of Statute

The purpose of the legislature in enacting the Metropolitan Police Law was to remove the police force as far as possible from the control of partisan political influences by putting it under civil service rules, and thus raise the standard of efficiency. State ex rel. Quintin v. Edwards, 40 M 287, 303, 106 P 695; State ex rel. Bennetts v. Duncan, 47 M 447, 454, 133 P 109.

The purpose of the laws relative to police departments and police commissioners was to remove the police from the influence of politics, and to make the tenure of the force secure irrespective of the political effect of their actions. In considering the broad powers given police commissions, it is apparent that they are not bodies for only advisory purposes, but that the intention of the legislature was to make them bodies of considerable importance whose findings should have weight. State ex rel. Goings v. City of Great Falls, 112 M 51, 56, 112 P 2d 1071.

References

State ex rel. Quintin v. Edwards, 38 M 250, 256, 99 P 940; State ex rel. Bailey v. Edwards, 40 M 313, 316, 106 P 703; State ex rel. Rowling v. District Court, 41 M 532, 533, 110 P 86; Wynne v. City of Butte, 45 M 417, 421, 123 P 531; Larkin v. City of Butte, 52 M 410, 412, 158 P 316; State ex rel. Daly v. Dryburgh, 62 M 36, 46, 203 P 508; Sweeney v. City of Butte, 64 M 230, 243, 208 P 943; Sullivan v. City of Butte, 65 M 495, 211 P 301; State ex rel. Gebhardt v. City Council of Helena, 102 M 27, 32, 55 P 2d 671.

Collateral References

Municipal Corporations⇦175, 180 (1).

62 C.J.S. Municipal Corporations §§ 563, 567 et seq.

11-1802. (5096) **Mayor or in those cities operating under the commission-manager plan, the manager thereof, to have charge of police department.** The mayor or in those cities operating under the commission-manager plan, the manager thereof, of all cities and towns shall have charge of and supervision over the police department thereof. He shall

appoint all the members and officers thereof. Subject to the provisions of this act, he shall have the power to suspend or remove any member or officer of the force. He shall make rules and regulations, not inconsistent with the provisions of this act, the other laws of the state, or the ordinances of the city or town council, for the government, direction, management, and discipline of the police force.

History: En. Sec. 2, Ch. 136, L. 1907; Sec. 3305, Rev. C. 1907; re-en. Sec. 5096, R. C. M. 1921; amd. Sec. 2, Ch. 152, L. 1947.

How Construed as to Appointment and Removal

A chief of police whose duties are the same as those of the ordinary policeman, except that the additional one of supervision and control of the entire force is imposed upon him, is a "policeman," and, as such, after appointment under the act placing the police departments of cities under civil service rules, he is secure from removal from office in any other manner than that provided in the act. State ex rel. Wynne v. Quinn, 40 M 472, 476, 107 P 506.

This section is wholly inconsistent with the notion that the mayor, or the council, or both together, may appoint or remove any member of the department in any other manner than that prescribed in the later law of which the section forms a part. State ex rel. Wynne v. Quinn, 40 M 472, 476, 107 P 506.

The power to reduce the police force, as constituted under the Metropolitan Police Law, if unnecessarily large or for economical reasons, resides in the city council, and not in the mayor. State ex rel. Rowling v. Mayor of Butte, 43 M 331, 336, 117 P 604.

The Metropolitan Police Law is quite similar, in its provisions relating to the appointment, suspension and discharge of the chief of police and of members of the police force, to the provisions of the Firemen's Act, as respects the chief and members of the city fire department. As to policemen, this court has held that the mode of their suspension or removal prescribed by the Metropolitan Police Law obtains under the commission form of government as forceably as under the aldermanic form. State ex rel. McDonald v. Getchell, 51 M 323, 152 P 480; State ex rel. Lease v. Wilkinson, 55 M 340, 177 P 401; State ex rel. Lease v. Wilkinson, 59 M 327, 196 P 878; State ex rel. Daly v. Dryburgh, 62 M 36, 46, 203 P 508.

Organization by Ordinance

A city ordinance, providing for the organization of the police department of the city, in conformity with the statute governing that matter, has, when duly passed, the force and effect of a statute. State ex rel. Dwyer v. Duncan, 49 M 54, 59, 140 P 95.

Review of Action by Mayor

If the mayor of a city puts members of the police department out of active service, but afterwards complies with an order of court to reinstate them, and, after they have served a short time, again retires them, he is not in contempt. State ex rel. Rowling v. District Court, 41 M 532, 534, 110 P 86.

In proceedings, under writ of supervisory control, to review the action of the district court in holding that the mayor of a city, to whom a writ of mandate has been issued to restore certain policemen to their offices, from which they had been unlawfully ousted by him under the provisions of the Metropolitan Police Law, the only question presented was whether said mayor had actually in good faith obeyed the order by restoring the officers to their places. Under these circumstances, the question whether the mayor could relieve the men from active duty and place them on the eligible list, and other kindred propositions not theretofore presented to the district court for adjudication, were not properly determinable. State ex rel. Rowling v. District Court, 41 M 532, 534, 110 P 86.

References

State ex rel. Quintin v. Edwards, 40 M 287, 302, 106 P 695; Larkin v. City of Butte, 52 M 410, 412, 158 P 316; Sweeney v. City of Butte, 64 M 230, 243, 208 P 943; State ex rel. O'Neill v. Mayor of Butte, 96 M 403, 404, 30 P 2d 819.

Collateral References

Municipal Corporations⇦168.
62 C.J.S. Municipal Corporations § 543.

11-1803. (5097) **Terms of members of police force.** All appointments to the police force must be appointed by the mayor or in those cities operating under the commission-manager plan, the manager thereof, and confirmed by the city council or commission, but no such appointment must be made, until an application for such position on the police force has been filed with the mayor or in those cities operating under the commission-manager plan, the manager thereof, and by him referred to the po-

lice commission, where such commission exists, and such applicant has successfully passed the examination required to be held by such police commission, and a certificate from such police commission that the applicant has qualified for such appointment has been filed with the mayor or in those cities operating under the commission-manager plan, the manager thereof. Every applicant who has passed such examination and received such certificate must first serve for a probationary term of not more than six months. At any time before the end of such probationary term, the mayor or in those cities operating under the commission-manager plan, the manager thereof, may revoke such appointment. After the end of such probationary period, and within thirty days thereafter, the appointment of such applicant must be submitted to the city council or commission, and if such appointment is confirmed by the city council or commission, such applicant becomes a member of the police force, and shall hold such position during good behavior, unless suspended or discharged as provided by law.

History: En. Sec. 3, Ch. 136, L. 1907; Sec. 3306, Rev. C. 1907; amd. Sec. 1, Ch. 198, L. 1921; re-en. Sec. 5097, R. C. M. 1921; amd. Sec. 2, Ch. 119, L. 1923; amd. Sec. 3, Ch. 152, L. 1947.

Applications for Appointment

Under this section, action by the mayor must precede that of the police commission, and the city clerk's action in transmitting an application to the police commission, could not bind the mayor; the mayor need not submit applications when no vacancy exists, nor need he submit every application where a vacancy does exist, the matter resting in his sound discretion. The purpose of the commission's certificate is to assure minimum qualifications. Horvath v. City of Anaconda, 112 M 266, 268, 116 P 2d 874.

Applications for Appointment—War Veterans

In a proceeding in mandamus to compel the mayor of a city to appoint an honorably discharged war veteran to the position of patrolman under chapter 66, Laws 1937 (77-501) held, that though a war veteran's application must be transmitted to the police commission by the mayor when a vacancy exists, unless on reasonable investigation the mayor is convinced he is not qualified, he may not be coerced by writ of mandate to take favorable action, if after investigation he learns that the veteran is not qualified physically due to a back injury. The duty to appoint carries with it the duty to determine the requisite qualifications. Horvath v. City of Anaconda, 112 M 266, 268, 116 P 2d 874; State ex rel. Montgomery v. City of Anaconda, 112 M 275, 277, 114 P 2d 1046.

Appointment on Completion of Probationary Term

It is obligatory upon the mayor of a city to appoint to permanent service on the police force a policeman who, after service for the probationary term of six months, has demonstrated his fitness for the position. State ex rel. Bennetts v. Duncan, 47 M 447, 452, 133 P 109.

Mandamus for Reinstatement

A policeman, discharged contrary to the provisions of the Metropolitan Police Law, is not guilty of laches in delaying, for thirteen months, to take any action by mandamus for his reinstatement, where he is awaiting the final decision of law questions in a similar pending proceeding. State ex rel. Bennetts v. Duncan, 47 M 447, 452, 133 P 109.

References

State ex rel. Quintin v. Edwards, 40 M 287, 302, 106 P 695; State ex rel. Wynne v. Quinn, 40 M 472, 477, 107 P 506; Grush v. Bishop, 46 M 97, 100, 126 P 619; Larkin v. City of Butte, 52 M 410, 412, 158 P 316; State ex rel. Breen v. Stodden, 58 M 116, 118, 190 P 991; State ex rel. Mueller v. District Court, 87 M 108, 112, 285 P 298; State ex rel. Anderson v. Fousek, 91 M 448, 453, 8 P 2d 791; State ex rel. O'Neill v. City of Butte, 96 M 403, 405, 30 P 2d 819.

Collateral References

Municipal Corporations⇨184 (1), (2).
62 C.J.S. Municipal Corporations §§ 572, 573.

11-1804. (5098) **Police commission required in first and second class cities—other cities and towns may provide for commission by ordinance.**

In cities of the first and second class the mayor or in those cities operating under the commission-manager plan, the manager thereof, shall nominate, and with the consent of the city council or commission appoint three residents of such city, who shall have the qualifications required by law to hold a municipal office therein, and who shall constitute a board to be known by the name of "police commission" who shall hold office for three years and that one such member must be appointed annually, at the first regular meeting of the city council or commission in May of each year. Provided, that at the first meeting of the council or commission in the month of May after the passage of this act, the mayor or in those cities operating under the commission-manager plan, the manager thereof, subject to the approval of the council or commission, shall appoint three members of such police commission, one to serve for one year, one for two years and one for three years from the date of their appointment and confirmation.

The compensation of the members of such board shall be fixed by the city council or commission not to exceed ten dollars per day, nor more than fifty dollars per month for any month for each member in cities of the first and second class.

The council or commission of any town or city, other than a city of the first and second class, may provide by ordinance for such a police commission in any such city or town. This act shall apply to organized police departments in every city and town of the state of Montana regardless of the form of government under which said city or town may be operating or may at any time adopt.

History: En. Sec. 4, Ch. 136, L. 1907; Sec. 3307, Rev. C. 1907; re-en. Sec. 5098, R. C. M. 1921; amd. Sec. 1, Ch. 119, L. 1923; amd. Sec. 1, Ch. 96, L. 1939; amd. Secs. 4, 5, Ch. 152, L. 1947.

Examining and Trial Board

The law, in effect, commands that there shall be an examining and trial board of the police department, the members of which the mayor is required to nominate, and as to cities of the first class the law is mandatory, and, as to other cities and towns, it is permissive only. State ex rel. Buckner v. City of Butte, 41 M 377, 383, 109 P 710.

Where the mayor of a city of the first class had appointed three residents to constitute the examining and trial board of the police department created by this section, such persons, having qualified, were de facto officers whose official acts were legal, notwithstanding the city council repeatedly refused to confirm them. State ex rel. Buckner v. City of Butte, 41 M 377, 383, 109 P 710.

References

State ex rel. Quintin v. Edwards, 40 M 287, 302, 106 P 695; State ex rel. Wynne v. Quinn, 40 M 472, 477, 107 P 506; Grush v. Bishop, 46 M 97, 100, 126 P 619; State ex rel. Bennetts v. Duncan, 47 M 447, 454, 133 P 109; McBroom v. City of Polson, 137 M 33, 349 P 2d 1023, 1024.

Collateral References

Municipal Corporations⇐181.
62 C.J.S. Municipal Corporations § 564.

11-1804.1. Third class cities—appointment of commission upon request of policemen—procedure for discharge of policemen. It is hereby made the duty of the mayor of any city of the third class which does not have a police commission, upon the written request of any policeman who has been employed by said city as such for a period of ten years or more, to appoint a police commission in accordance with the provisions of section 11-1804, Revised Codes of Montana, 1947, which commission shall then proceed under the provisions of section 11-1806, Revised Codes of

Montana, 1947, before such policeman can be discharged or terminated from his employment as a policeman.

History: En. Sec. 1, Ch. 199, L. 1959.

11-1805. (5099) **Examination of applicants for position on police force.** All applicants for positions on the police force, whose application shall have been referred to the police commission, shall be required successfully to undergo an examination before the police commission, and to receive a certificate from said commission that the applicant is qualified for such appointment for the probationary period upon the police force.

It shall be the duty of the police commission to examine all such applicants as to their age, legal, mental, moral and physical qualifications, and their ability to fill the office as a member of the police force, it shall also be the duty of the police commission subject to the approval of the mayor, to make such rules and regulations regarding such examinations not inconsistent with this act or the laws of the state.

Any applicant who shall make any false statement to the police commission as to his age or other qualifications required, at his examination before the police commission, shall be subject to suspension or dismissal from the police force, after trial.

History: En. Sec. 5, Ch. 136, L. 1907; Sec. 3308, Rev. C. 1907; amd. Sec. 2, Ch. 198, L. 1921; re-en. Sec. 5099, R. C. M. 1921; amd. Sec. 3, Ch. 119, L. 1923.

Finality of Decision of Board

The effect of this provision is that a decision of the examining and trial board on questions of fact is final and conclusive on all courts if there is any substantial evidence to support it. Bailey v. Examining and Trial Board, 42 M 216, 218, 122 P 69; Bailey v. Examining and Trial Board, 45 M 197, 202, 122 P 572.

Probationary Term

A police captain is a "policeman," and upon appointment, after having served the probationary term of six months, is secure from removal from office except as provided by law. State ex rel. Bailey v. Edwards, 40 M 313, 318, 106 P 703.

A probationer, being a member of the police force, can be removed only upon charges made and trial had in conformity with this section and section 11-1806. State ex rel. Bennetts v. Duncan, 47 M 447, 455, 133 P 109.

References

State ex rel. Quintin v. Edwards, 40 M 287, 304, 106 P 695; State ex rel. Wynne v. Quinn, 40 M 472, 480, 107 P 506; Grush v. Bishop, 46 M 97, 100, 126 P 619; State ex rel. Dwyer v. Duncan, 49 M 54, 58, 140 P 95; Larkin v. City of Butte, 52 M 410, 412, 158 P 316; State ex rel. O'Brien v. City of Butte, 54 M 533, 535, 172 P 134; State ex rel. Examining and Trial Board v. Jackson, 58 M 90, 100, 190 P 295; State ex rel. Breen v. Stodden, 58 M 116, 118, 190 P 991; State ex rel. Lease v. Wilkinson, 59 M 327, 335, 196 P 878; State ex rel. Daly v. Dryburgh, 62 M 36, 46, 203 P 508; Sweeney v. City of Butte, 64 M 230, 243, 208 P 943; King v. City of Butte, 71 M 309, 310, 230 P 62; State ex rel. O'Neill v. City of Butte, 96 M 403, 405, 30 P 2d 819.

11-1806. (5100) **Presentation and trial of charges against policemen.** (1) The police commission shall have the jurisdiction, and it shall be its duty to hear, try and decide all charges brought by any person or persons against any member or officer of the police department, including any charge that such member or officer is incompetent, or by age or disease, or otherwise, has become incapacitated to discharge the duties of his office, or has been guilty of neglect of duty, or of misconduct in his office, or of conduct unbecoming a police officer or has been found guilty of any crime, or whose conduct has been such as to bring reproach upon the police force.

(2) Any charge brought against any member of the police force must be in writing in the form required by the police commission and a copy thereof must be served upon the accused officer or member at least fifteen (15) days before the time fixed for the hearing of such charge.

(3) It is the duty of the police commission at the time set for hearing a charge against a police officer, to forthwith proceed to hear, try and determine the charge according to the rules of evidence applicable to courts of record in the state of Montana. The accused shall have the right to be present at the trial in person and by counsel, and to be heard, and to give and furnish evidence in his defense. All trials shall be open to the public.

(4) The chairman, or acting chairman, of the police commission, shall have power to issue subpoenas, attested in its name, to compel the attendance of witnesses at the hearing and any person duly served with a subpoena is bound to attend in obedience thereto, and the police commission shall have the same authority to enforce obedience to the subpoena, and to punish the disobedience thereof, as is possessed by a judge of the district court in like cases, provided, however, that punishment for disobedience is subject to review by the district court of the proper county.

(5) The police commission must, after the conclusion of the hearing or trial, decide whether the charge was proven or not proven, and shall have the power, by a decision of a majority of the commission, to discipline, suspend, remove or discharge any officer who shall have been found guilty of the charge filed against him.

(6) Such action of the police commission shall, however, be subject to modification or veto by the mayor, made in writing, giving reasons therefor, which shall become a permanent record of the police commission, provided, however, that where and when the police commission decides the charge not proven the decision is not subject to modification or veto by the mayor nor subject to any review but is final and conclusive.

Where the police commission decides the charge proven, the mayor, within five (5) days from the date of the filing of such findings and decision with the city clerk, may modify or veto such findings and decision.

(7) When a charge against a member of the police force is found proven by the board, and is not vetoed by the mayor, the mayor must make an order enforcing the decision of the board, or if modified by the mayor, then such decision as modified, and such decision or order shall be subject to review by the district court of the proper county on all questions of fact and all questions of law.

(8) The district court of the proper county shall have jurisdiction to review all questions of fact and all questions of law in a suit brought by any officer or member of the police force, but no suit to review such hearing or trial or for reinstatement to office shall be maintained unless the same is begun within a period of sixty (60) days after the decision of the police commission or order of the mayor has been filed with the city clerk.

(9) In no case shall any officer or member of the police force, be discharged without a hearing or trial before the police commission, as herein

provided, in all cities of the first class, cities of the second class, any and all cities having a duly and regularly appointed, qualified and acting police commission, and all cities and municipalities functioning under the commission form, city manager plan or under a mayor.

(10) The mayor or chief of police, subject to the approval of the mayor, shall have the power in all cases, to suspend a policeman, or any officer, for a period of not exceeding ten (10) days in any one (1) month, such suspension to be with or without pay as the order of suspension may determine. Any officer suspended, with or without pay, is entitled to appeal such suspension to the police commission and it shall be the duty of the commission to hear, try and decide all charges brought by any person or persons against any member or officer of the department. The mayor of any city shall have the power and authority at any time when he deems it expedient to employ not to exceed two (2) persons at one time for a period not to exceed thirty (30) days to do police duty who are not members of the police department.

(11) That wherever the word "mayor" is used in this act, it is intended to include "city manager," "city commissioner" or any other name or designation used to identify or designate the chief executive of any city or municipality.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R. C. M. 1921; amd. Sec. 4, Ch. 119, L. 1923; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959.

Charge To Be in Writing

The requirement of this section, that a complaint charging a police officer with any of the offenses triable by the examining and trial board of the police department shall be reduced to writing, is met if it in substance makes out any of the offenses mentioned therein. Bailey v. Examining and Trial Board, 45 M 197, 199, 122 P 572.

Trial

It is contemplated that charges against any officer in the department shall be heard by the examining and trial board. State ex rel. Dwyer v. Duncan, 49 M 54, 58, 140 P 95.

Under the Metropolitan Police Law there is not inherent right of indefinite tenure in the office of policeman, but, when remiss in their duty, the members of the police force are subject to discipline or removal from office after trial before the police commission which has quasi-judicial powers not limited by the provisions of the constitution applicable to courts. State ex rel. Mueller v. District Court, 87 M 108, 112, 285 P 928.

In the absence of statutory provision for the disqualification of members of the police commission on the ground of bias or prejudice, vested, as it is, with exclusive jurisdiction to hear and determine charges against members of the police force, the right of a member of the commission to participate in a hearing of charges against a policeman is not vulnerable to such attack, the rule of disqualification not applying to officers not judicial. State ex rel. Mueller v. District Court, 87 M 108, 112, 285 P 928.

The writ of prohibition lies only to arrest proceedings without or in excess of jurisdiction—the power to hear and determine the case; therefore where the affidavit for the writ does not present a jurisdictional question, as where a policeman under charges for misconduct seeks to disqualify a member of the police board from participating in the hearing for bias and prejudice but the statute does not provide for such disqualification, leaving the question of jurisdiction unaffected, the writ does not lie. State ex rel. Mueller v. District Court, 87 M 108, 112, 285 P 928, distinguished in 103 M 487, 498, 63 P 2d 141.

Where the chairman of a police commission, though restrained from officially participating in the trial of a policeman for misconduct in office by writ of prohibition, improperly issued, nevertheless was present at the trial throughout though not acting as chairman, his right to join his colleagues in the final disposition of the case, after dismissal of the prohibition proceeding, was not affected by the issuance of the writ. State ex rel. Mueller v. District Court, 87 M 108, 112, 285 P 928.

What Is Sufficient Misconduct

A police officer who, after having been notified of an obstruction on a sidewalk

by a pedestrian who was injured by falling over it, paid no attention to the complaint further than to say that nothing could be done unless the complainant should swear out a warrant against the owner of the premises, was guilty of misconduct in office, in view of police regulations governing such matters, as well as of neglect of duty; and a charge substantially embodying these facts was sufficient to state either or both of these offenses made triable by the trial board of the police department. Bailey v. Examining and Trial Board, 45 M 197, 202, 122 P 572.

In every proceeding for the removal of an officer the charges against him are not to be tested by the rigid rules of criminal procedure, but the ultimate inquiry is the fitness of the accused to hold his position, and such inquiry is raised by the specific questions whether he is incompetent or has been guilty of neglect of duty or misconduct in office, or conduct unbecoming an officer. State ex rel. O'Brien v. City of Butte, 54 M 533, 536, 172 P 134.

The sufficiency of charges against a police officer cannot be defeated by the fact that the specifications considered as a basis for criminal prosecution may be barred by the statute of limitations. State ex rel. O'Brien v. City of Butte, 54 M 533, 536, 172 P 134.

References

State ex rel. Wynne v. Quinn, 40 M 472, 477, 107 P 506; State ex rel. Bennetts v. Duncan, 47 M 447, 455, 133 P 109; Larkin v. City of Butte, 52 M 410, 412, 158 P 316; State ex rel. Lease v. Wilkinson, 59 M 327, 334, 196 P 878; State ex rel. Daly v. Dryburgh, 62 M 36, 46, 203 P 508; Sweeney v. City of Butte, 64 M 230, 243, 208 P 943.

Collateral References

Municipal Corporations⇦185 (1-15).

62 C.J.S. Municipal Corporations §§ 579, 582.

11-1807. (5101) **Active and eligible lists of policemen—filling vacancies—limitation of eligible list.** The city council shall have absolute and exclusive power to determine and limit the number of police officers and members to comprise the police force of any city, and to divide the police membership into two lists, one an active list, who are to be actually employed and receive pay while so employed, and one an eligible list, who shall not receive pay, while not actually employed as an officer, or member, and to reduce the number of the police force at any time. That such officers or members of the active list, temporarily relieved, from duty, shall become members of the eligible list without pay and shall be first entitled to reinstatement on the active list, in case of vacancy, according to their seniority in the service, and all others on the eligible list shall be entitled to fill a vacancy, in the order of their appointment. Such action of the council shall not be subject to review by any court.

In no event shall there be any officers or members placed on the eligible list, except in case of temporary reduction of the police force, when the number already on the eligible list shall equal in number twenty per cent of the active list.

History: En. Sec. 7, Ch. 136, L. 1907; Sec. 3310, Rev. C. 1907; re-en. Sec. 5101, R. C. M. 1921; amd. Sec. 5, Ch. 119, L. 1923.

Civil Service

The act of the mayor and city council in retiring a lieutenant of police to the eligible list, on the ground of economy, and immediately thereafter appointing another to fill the same office, was a violation of the civil service principle upon which the Metropolitan Police Law is founded and did not deprive the plaintiff of his office. State ex rel. Dwyer v. Duncan, 49 M 54, 59, 140 P 95.

References

State ex rel. Wynne v. Quinn, 40 M 472, 477, 478, 107 P 506; State ex rel. Bennetts v. Duncan, 47 M 447, 455, 133 P 109; Sweeney v. City of Butte, 64 M 230, 243, 208 P 943; State ex rel. Montgomery v. City of Anaconda, 112 M 275, 277, 114 P 2d 1046.

Collateral References

Municipal Corporations⇦180 (2).

62 C.J.S. Municipal Corporations § 570.

11-1808. Positions on police force—reinstatement. An applicant for a position on the police force who has already served twenty (20) years or more in the aggregate on the police force of the city or town in the state of Montana in which he is applying for reinstatement, may make application within one (1) year from the date on which his name was removed from the active list of police officers, except that such application need not be made by officers who have heretofore been removed from said list, to the police commission of that city or town wherein he last served and his application must be considered by said police commission within thirty (30) days after receipt of said application, and said commission shall not require the applicant to have a physical examination or other examination required of applicants for a position on the police force, and in the event that the police commission recommends the reinstatement of said applicant as a member of the police force, the probationary term required of applicants for positions shall be dispensed with as to such applicant for reinstatement, and it shall be the duty of the mayor to submit to the city council of said city at its next regular meeting, the recommendation of the police commission, and in the event that a majority of the city council vote in favor of adopting the recommendation of the commission, said applicant shall be immediately reinstated as a police officer in said city or town.

History: En. Sec. 1, Ch. 205, L. 1939.

Collateral References

Municipal Corporations⇐185 (14).
62 C.J.S. Municipal Corporations § 581.

11-1809. Rights upon reinstatement. An applicant for reinstatement under the provisions of section 11-1808 may be reinstated and passed into the reserve list of police officers so as to enjoy all the benefits, pensions and rights which accrue to police officers placed on the reserve list in said city or town; and provided further that the pension benefits to be allowed to such reinstated officer shall be computed upon the basis of his last full year of active service on said police force.

History: En. Sec. 2, Ch. 205, L. 1939.

11-1810. (5102) **Exemptions of members of police force.** No member of the police force shall be liable to military or jury duty, or to arrest on civil process, while actually on duty, nor shall he hold any other office, or be employed in any other department of the city or town government.

History: En. Sec. 8, Ch. 136, L. 1907; Sec. 3311, Rev. C. 1907; re-en. Sec. 5102, R. C. M. 1921.

References

State ex rel. Wynne v. Quinn, 40 M 472, 477, 478, 107 P 506.

Collateral References

Arrest⇐9; Jury⇐55; Municipal Corporations⇐184 (2).

6 C.J.S. Arrest § 29; 50 C.J.S. Juries § 153; 62 C.J.S. Municipal Corporations § 571.

38 Am. Jur. 2d 952, Grand Jury, § 8; 31 Am. Jur. 595, Jury, §§ 54-56.

Validity and effect of plan or practice of consulting preferences of persons eligible for jury service as regards periods or times of service or character of actions. 112 ALR 995.

Police officers or other law enforcement officers as jurors in criminal cases. 140 ALR 1183.

11-1811. (5103) **Members of the police department not to take part in political conventions.** No officer or member of the police department shall be a member of or delegate to any political convention, nor shall he be present at such convention, except in the performance of duty relating to his position as such officer or member.

History: En. Sec. 9, Ch. 136, L. 1907; Sec. 3312, Rev. C. 1907; re-en. Sec. 5103, R. C. M. 1921.

References

State ex rel. Wynne v. Quinn, 40 M 472, 477, 107 P 506; State ex rel. Bennetts v. Duncan, 47 M 447, 450, 133 P 109.

Collateral References

Municipal Corporations⚖189 (1).
62 C.J.S. Municipal Corporations § 575.

11-1812. (5104) **Prohibited from soliciting for votes.** It shall be unlawful for any officer or member of the police department to solicit any person to vote at any political caucus, primary, or election for any candidate, or to challenge any voter, or in any manner to attenpt to influence any voter at any political caucus, primary, or at any election, or be a member of any political committee.

History: En. Sec. 10, Ch. 136, L. 1907; Sec. 3313, Rev. C. 1907; re-en. Sec. 5104, R. C. M. 1921.

References

State ex rel. Wynne v. Quinn, 40 M 472, 477, 107 P 506.

11-1813. (5105) **City council may make additional regulations.** In addition to the provisions herein contained, the city or town council may make any ordinances, not inconsistent with this act, or any law of the state, for the government of the police department, and for regulating the powers and duties of its officers and members.

History: En. Sec. 11, Ch. 136, L. 1907; Sec. 3314, Rev. C. 1907; re-en. Sec. 5105, R. C. M. 1921.

Members of Force—Determination of Competency

The city council may furnish assistance to the mayor, in the form of a commission, to determine the physical competency of the members of the police force. Larkin v. City of Butte, 52 M 410, 413, 158 P 316.

References

State ex rel. Quintin v. Edwards, 40 M 287, 302, 106 P 695; State ex rel. Dwyer v. Duncan, 49 M 54, 58, 140 P 95.

Collateral References

Municipal Corporations⚖180 (1).
62 C.J.S. Municipal Corporations § 568.

11-1814. (5106) **Qualifications of policemen.** The members of a police department of any city, at the time of their appointment under this act, shall not be less than twenty-one years of age nor more than forty years of age, provided, however, that any city council shall have the power by ordinances duly passed and approved to retire any police officer on half pay, who shall have arrived at the age of sixty-five years, or who shall have served continuously as a police officer for a period of not less than twenty-five years, or who shall have become incapacitated to perform the duties of his office by reason of injury or accident sustained while actually engaged in the performance of his duties as an officer.

In every case a police officer must be a citizen of the United States, must have resided in the state of Montana at least two years, and have been a resident of the city or town in which he is appointed at least six (6) months prior to such appointment, such qualifications also to apply

to every officer on the eligible list, at the time he shall be transferred to the active list.

Every police officer must be able to speak and write understandingly the English language.

History: En. Sec. 12, Ch. 136, L. 1907; Sec. 3315, Rev. C. 1907; re-en. Sec. 5106, R. C. M. 1921; amd. Sec. 6, Ch. 119, L. 1923; amd. Sec. 1, Ch. 29, L. 1959.

Appointment of Policemen in Third Class City

Where a city had not elected to come under the provisions of the Metropolitan Police Law, it was not bound by any of the provisions thereof and was not prohibited from appointing a policeman who had not been a resident for six months. McBroom v. City of Polson, 137 M 33, 349 P 2d 1023.

Finding of Commission Binding upon City Council

In an action in mandamus in which relator sought a writ commanding the city council to put him on the reserve list of police officers of the city, in accordance with a finding of the police commission submitted to the council that relator was permanently disabled in line of duty so as to impair his ability as an active police officer, and recommending the council and board of trustees of the police pension fund that he become a member of the police reserves, held, such finding was binding on the council to proceed under this section and by ordinance place him on the reserve list and ordered him paid as provided by statute. State ex rel. Goings v. City of Great Falls, 112 M 51, 58, 112 P 2d 1071.

References

State ex rel. Wynne v. Quinn, 40 M 472, 477, 107 P 506.

Collateral References

Municipal Corporations⇐184 (2), (3).
62 C.J.S. Municipal Corporations §§ 570, 571.

11-1815. (5107) **Salary of chief of police.** That from and after July 1, 1957, the salary of the chief of police in cities of the first class shall not be less than four hundred fifty dollars ($450.00) per month for the first year of service, and thereafter of at least four hundred fifty dollars ($450.00) per month, plus one per cent (1%) of said minimum base monthly salary for each additional year of service up to and including the twentieth year of such additional service. Subject to such minimum the salary of the chief of police may be increased from time to time by the mayor, subject to the consent and approval of the council.

History: En. Sec. 13, Ch. 136, L. 1907; Sec. 3316, Rev. C. 1907; re-en. Sec. 5107, R. C. M. 1921; amd. Sec. 1, Ch. 9, L. 1951; amd. Sec. 1, Ch. 29, L. 1957.

Cross-Reference

Salary of chief of police in second and third class cities, sec. 11-730.

References

State ex rel. Wynne v. Quinn, 40 M 172, 477, 107 P 506; State ex rel. Gebhardt v. City of Helena, 102 M 27, 55 P 2d 671.

Collateral References

Municipal Corporations⇐182.
62 C.J.S. Municipal Corporations § 565.

11-1816. (5108) **Repealing clause.** All acts and parts of acts inconsistent with the provisions of this act are hereby repealed, but nothing herein contained shall abridge any of the powers possessed by the mayor of any city or town under any other provisions of law or any ordinance.

History: En. Sec. 14, Ch. 136, L. 1907; Sec. 3317, Rev. C. 1907; re-en. Sec. 5108, R. C. M. 1921.

Intent of Legislature

The saving clause of this section serves no purpose other than to indicate that the legislature did not intend to repeal any existing law or ordinance of any city which was not inconsistent with the law enacted. State ex rel. Wynne v. Quinn, 40 M 472, 480, 107 P 506.

References

State ex rel. Quintin v. Edwards, 38 M 250, 270, 99 P 940; State ex rel. Quintin v. Edwards, 40 M 287, 297, 106 P 695; State ex rel. Bailey v. Edwards, 40 M

313, 316, 106 P 703; State ex rel. Buckner v. Mayor of Butte, 41 M 377, 380, 109 P 710; State ex rel. Rowling v. District Court, 41 M 532, 533, 110 P 86; State ex rel. Rowling v. City of Butte, 43 M 331, 117 P 604; Grush v. Bishop, 46 M 97, 98, 126 P 619; State ex rel. Dwyer v. Duncan, 49 M 54, 58, 140 P 95; Larkin v. City of Butte, 52 M 410, 412, 158 P 316.

Collateral References

Municipal Corporations⇨176 (3).
62 C.J.S. Municipal Corporations § 563.

11-1817. (5108.1) **Age restriction on policemen—not applicable to veterans, present members and police reserves.** The members of the police department on the active list of any city at the time of their appointment under this act shall not be less than twenty-one (21) years of age, nor more than thirty-five (35) years of age, but this restriction shall not apply to any member of any present police department, nor to police reserves hereinafter provided for nor to honorably discharged persons who served in the armed forces of the United States in time of war, providing such time of service be not less than three months.

History: En. Sec. 1, Ch. 100, L. 1927; amd. Sec. 1, Ch. 16, L. 1929; amd. Sec. 1, Ch. 120, L. 1929; amd. Sec. 1, Ch. 93, L. 1947.

11-1818. (5108.2) **Police reserves—qualifications.** Whenever any person who has heretofore or shall hereafter have completed twenty (20) years or more in the aggregate, either as a probationary officer, a regular member of such police department, or as a special police officer of said police department, in any capacity or rank whatever in cities of the first and second class, provided that such police officer serving in the United States army or navy, in time of war or national emergency, shall be given credit upon his police record for such service in the same manner as though on active police duty for such time, he may at his option pass from the active list of police officers of such city or town and become a member of the police reserves of said city or town, and if he reaches the age of sixty-five (65) years while in active service, he shall pass from the active list of police officers of such city or town and become a member of the police reserves of such city or town.

History: En. Sec. 2, Ch. 100, L. 1927; amd. Sec. 2, Ch. 120, L. 1929; amd. Sec. 1, Ch. 78, L. 1937.

Conflicting Ordinances

Where plaintiff had served twenty years of continuous service on the active list of the city police force and was ready for retirement, newly passed city ordinance requiring thirty years of continuous active service for retirement was in conflict with this section and section 11-1821 and invalid. Bartels v. Miles City, 145 M 116, 399 P 2d 768.

References

State ex rel. Goings v. City of Great Falls, 112 M 51, 54, 112 P 2d 1071.

Collateral References

Municipal Corporations⇨180 (2).
62 C.J.S. Municipal Corporations § 570.

11-1819. (5108.3) **Police reserves may be called into active service, when.** Policemen or officers on the reserve list of any city or town of this state shall retire from the active list of police officers of such city or town but shall be subject to call for police service or active duty whenever an emergency shall require or the active list be temporarily insufficient for proper policing of such city or town, all under the rules and regulations as the board of police commissioners or city council shall prescribe.

History: En. Sec. 3, Ch. 100, L. 1927; amd. Sec. 3, Ch. 120, L. 1929.

11-1820. (5108.4) **Policeman incapacitated in discharge of duties becomes member of police reserves, when.** Whenever any policeman or officer shall receive injuries or disabilities while on duty, or in active discharge of the duties of a police officer, and in line of duty, which injuries or disability shall, in the opinion of the board of police commissioners or city council of the city or town, to be of such character to impair his ability as an active police officer, or incapacitate him for the further discharge of his duties, as such, he shall become a member of the police reserves of such city or town in like manner as though he had arrived at the age of transfer to the reserve list of such department.

History: En. Sec. 4, Ch. 100, L. 1927; amd. Sec. 4, Ch. 120, L. 1929.

Finding of Commission Binding on Council — "Or"

Construing this section in connection with section 11-1818, held, in a proceeding in mandamus to compel the city council to place the name of petitioner upon such list, that under this section, the finding of disability on the part of petitioner made by police commission is binding on the city council, and is not a mere recommendation which the council may disregard; the word "or" is used in the disjunctive, hence this section means that if a city has a police commission, its finding shall control, otherwise the function rests upon the city council. State ex rel. Goings v. City of Great Falls, 112 M 51, 55, 112 P 2d 1071.

11-1821. (5108.5) **Payment of police reserves.** (1) Whenever any policeman or officer shall from age or disability become transferred from the active list of the police officers of any city or town to the reserve list of such city or town, he shall thereafter be paid in monthly payments from the funds in this act provided for, a sum equal to one-half (½) the salary he was receiving during the year prior to the time he passed to the police reserve list.

(2) Upon the death of any policeman or any officer on the active list or reserve list of any city or town, his surviving dependent widow, if there be such a surviving widow, shall, as long as she remains his widow, be paid, from the police reserves' fund, a sum equal to one-half (½) the salary such policeman or officer was receiving during the year prior to the date of his demise or prior to the date such policeman or officer passes to the police reserve list. No surviving widow shall be entitled to payments under the provisions of this act if she be fifteen (15) years younger than her husband, unless she shall have been married to and living with her husband for ten (10) years immediately preceding his death. If such policeman or officer shall leave a dependent minor child, or dependent minor children, then upon the death of such policeman or officer, providing he leaves no surviving widow, or upon the death or remarriage of his widow, or if his widow be fifteen (15) years younger than her husband and shall not have been married to and living with her husband for the ten (10) years immediately preceding his death, then his surviving dependent minor child, or dependent children, collectively, if there be more than one dependent minor child, shall be paid the same monthly payments as are herein provided to be paid to the surviving widow, until such minor child, or minor children, shall have attained the age of eighteen (18) years or shall have married; provided further that the payments herein provided for to be made to the surviving widow and/or children shall not be made if such payments will require an increase in the millage tax levy now provided for by section 11-1823.

(3) Payments as herein provided for, to be made to the minor child or children of police officers shall be paid to the duly appointed, qualified and acting guardian of such child or children, for the use of such minor, until such minor shall have reached the age of eighteen (18) years or shall have married and in case there is more than one minor child, upon each such child reaching the age of eighteen (18) years the prorata payments to such child shall cease and shall be made to the remaining minor child or children until the youngest child shall reach the age of eighteen (18) years or shall have married.

(4) The term "policeman," or "police officer," as herein used shall include all those on the reserve list, as well as "active police," "police officer," and/or "patrolman."

History: En. Sec. 5, Ch. 100, L. 1927; amd. Sec. 5, Ch. 120, L. 1929; amd. Sec. 1, Ch. 15, L. 1939; amd. Sec. 1, Ch. 69, L. 1951; amd. Sec. 1, Ch. 45, L. 1953; amd. Sec. 1, Ch. 176, L. 1955.

Conflicting Ordinances

Where plaintiff had served twenty years of continuous service on the active list of the city police force and was ready for retirement, newly passed city ordinance requiring thirty years of continuous active service for retirement was in conflict with this section and section 11-1818 and invalid. Bartels v. Miles City, 145 M 116, 399 P 2d 768.

Meaning of "Age"

Since most cities of the first and second class had interpreted subsection (1) of this section to allow a police officer to receive a pension after twenty years of active service, court considered this in determining that the word "age" in subsection (1) referred to time of service, rather than retirement age alone. Bartels v. Miles City, 145 M 116, 399 P 2d 768.

Collateral References

Municipal Corporations⇨187.

62 C.J.S. Municipal Corporations § 588.

Retroactive application of fireman's or policeman's pension statutes. 27 ALR 2d 978.

11-1822. (5108.6) **Compensation and allowance of sick or injured policemen.** Whenever any member of a police department in any city or town, shall on account of sickness or disability, suffered or sustained while a member of such police department, and not caused or brought on by dissipation or abuse, be confined to any hospital or his home, and shall require medical attention and care, the officer of such police department may be, by the city council, allowed his salary as such police officer, during his absence, and an amount equal to his expenses while confined for such injury or sickness.

History: En. Sec. 6, Ch. 100, L. 1927; amd. Sec. 6, Ch. 120, L. 1929.

Right of policeman to recover under workmen's compensation act. 10 ALR 201 and 81 ALR 478.

Collateral References

Municipal Corporations⇨187.

62 C.J.S. Municipal Corporations § 588.

11-1823. (5108.7) **Fund for payment of officers on reserve lists—tax levy.** For the purpose of paying the salaries of policemen who have been placed upon the reserve list of the cities of the first and second class, the city or town council, or commissioners, shall in the manner provided for by law, and at the time of the levy of the annual tax, levy such special tax of not to exceed one (1) mill on the dollar upon the assessed valuation of all taxable property within the limits of said city or town, which said tax shall be collected as other taxes and when so collected, shall be paid into the fund created for the payment of such salaries of police officers upon the reserve list.

However, in case the demand against such fund shall be heavier than said levy can provide, then and in such case such additional levy of not to exceed two (2) mills may be made until such returns from the first mill levy be sufficient to meet the demand.

History: **En. Sec. 7, Ch. 100, L. 1927; amd. Sec. 7, Ch. 120, L. 1929; amd. Sec. 2, Ch. 78, L. 1937; amd. Sec. 1, Ch. 78, L. 1949; amd. Sec. 1, Ch. 8, L. 1959.**

Collateral References

Municipal Corporations⇐187.
62 C.J.S. Municipal Corporations § 588.

11-1824. (5108.8) **Cities under second class may come within provisions of act by passing ordinance and making levy.** Cities other than those in the first and second class may come within the provisions of this act by duly passing an ordinance of their desire to come within the provisions of the act and making the tax levy herein provided for.

History: **En. Sec. 8, Ch. 100, L. 1927; amd. Sec. 8, Ch. 120, L. 1929.**

References

McBroom v. City of Polson, 137 M 33, 349 P 2d 1023, 1024.

11-1825. (5108.9) **Salary deduction for payment of reserve officers.** The treasurer of any incorporated city which may be hereafter subject to the provisions of this act, shall retain from the monthly salary of all police officers upon the active list, a sum equal to three per centum (3%) of the monthly compensation paid each officer for his services as such police officer, the said monthly deduction from the salaries of such police officers, shall be paid into the fund created by the tax levy for the purpose of paying the salaries of police officers upon the reserve list.

History: **En. Sec. 9, Ch. 100, L. 1927; amd. Sec. 9, Ch. 120, L. 1929; amd. Sec. 1, Ch. 54, L 1953.**

Collateral References

Municipal Corporations⇐187.
62 C.J.S. Municipal Corporations § 588.

11-1826. (5108.10) **Gifts and moneys to be applied to fund.** All moneys withheld from salaries of police officers for the violation of rules and regulations of such police departments, all bequests, gifts or emoluments, paid or given on account of any extraordinary service of any member of such police department, except when specifically allowed to be retained by such officer by the mayor, commissioners and chief of police, and all moneys derived from the provisions of this act, shall be placed in the fund created by the tax levy of taxable property and per centum of salaries withheld from such police officers.

History: **En. Sec. 10, Ch. 100, L. 1927; amd. Sec. 10, Ch. 120, L. 1929.**

11-1827. (5108.11) **Investment of fund.** All moneys in said fund in excess of such an amount as shall be deemed necessary from time to time to meet current payments to reserve police officers, shall be invested as hereinafter provided, and all interest on any and all moneys belonging to said fund from whatever source derived shall belong to and be paid into said fund.

History: **En. Sec. 11, Ch. 120, L. 1929.**

11-1828. (5108.12) **Trustees of fund—appointment—terms.** A board of trustees of said fund shall be created in each city or town, having such

fund, to consist of the mayor, clerk and attorney of said city or town, and two (2) members of the police department from the active list of the police officers of said city or town, who shall be selected by a majority vote of the members of the police department on the active list of said city or town, the two first selected after the passage of this act shall be so selected that one shall be selected for a term of two (2) years and the other for a term of one (1) year. That said first selection shall be made between the first and tenth day of May, of the year 1929, and annually thereafter between the first and tenth day of May, one member shall be selected for the term of two (2) years. A certificate of the election of the members or member of the police department selected for said board of trustees shall be immediately upon such selection being made, certified to the city clerk of the city or town, by the chairman and secretary of the meeting at which selection was made.

History: En. Sec. 12, Ch. 120, L. 1929.

11-1829. (5108.13) **Trustees' duties—auditing of fund—investment—report on retirement of policemen.** The board of trustees of said fund, shall audit the same from time to time at least twice during each year, and report the condition of said fund annually to the city or town council on or before the first day of April of each year. And the said board of trustees, shall invest the money in said fund from time to time as may be directed by the city or town council. But the money of said fund shall not be invested in any other than bonds of the United States or of the state of Montana, or bonds or warrants of the city or town, in which said fund exists, which are general liabilities of the whole city or town. And said trustees shall make sale of such bonds or securities when desirable and as directed by the city or town council. All such bonds and warrants shall be deemed part of the said fund and shall be kept in the possession of the city or town treasurer, and the treasurer shall be responsible therefor in the same manner as he is for all other moneys or funds of the city or town. Before any member of the police department is placed on the reserve list by the city council, the said board of trustees of said fund shall report to the city council in writing their recommendations as to whether or not such member shall be placed upon said reserve list.

History: En. Sec. 13, Ch. 120, L. 1929.

References

State ex rel. Goings v. City of Great Falls, 112 M 51, 53, 112 P 2d 1071.

11-1830. (5108.14) **Limit of use of fund.** Said fund shall not be used for any purpose whatsoever, other than the payment to members of the police department on the reserve list of the amounts to which they are entitled under the provisions of this act.

History: En. Sec. 14, Ch. 120, L. 1929.

11-1831. (5108.15) **Days off duty without loss of compensation.** That each member of the police force in every city of the first and second class shall be given two (2) days off duty in each seven (7) day period without loss of compensation.

History: En. Sec. 1, Ch. 53, L. 1931; amd. Sec. 1, Ch. 65, L. 1957.

Collateral References

Municipal Corporations⇐186 (4).

11-1832. (5108.16) **Minimum wage of police in first and second class cities.** That from and after July 1, 1967, there shall be paid to each duly confirmed member of the police department of cities of the first and second class of the state of Montana, a minimum wage for a daily service of eight (8) consecutive hours' work, of at least four hundred dollars ($400) minimum per month for the first year of service, and thereafter of at least four hundred dollars ($400) minimum per month plus one per cent (1%) of said minimum base monthly salary of four hundred dollars ($400) for each additional year service up to and including the twentieth year of such additional service.

History: En. Sec. 1, Ch. 55, L. 1935; amd. Sec. 2, Ch. 96, L. 1939; amd. Sec. 1, Ch. 294, L. 1947; amd. Sec. 1, Ch. 47, L. 1951; amd. Sec. 1, Ch. 28, L. 1957; amd. Sec. 1, Ch. 266, L. 1967.

Constitutionality

This section does not offend against section 4, article XII of the constitution prohibiting the legislature from levying taxes upon the inhabitants or property in cities; held, further, that in maintaining a police force city is performing a governmental function and not acting in its proprietary capacity, and subject to state control; hence may not refuse to enforce the provisions of this section and section 11-1833. State ex rel. Gebhardt v. City of Helena, 102 M 27, 38, 55 P 2d 671.

Annual Increase

Although the wages provided for by the 1957 amendment are payable only after July 1, 1957, this does not mean that the legislature did not intend to consider service prior to that date in computing what the wages shall be. Hill v. Billings, 134 M 282, 328 P 2d 1112, 1115.

In enacting Laws of 1957, chapter 28, amending this section, the legislature intended to recognize the status of police officers according to the length of service in the past and to reward the more experienced by paying them a higher wage scale. The legislature drew no distinction between years of service performed before July 1, 1957, and those performed after that date. Hill v. Billings, 134 M 282, 328 P 2d 1112, 1116.

Under this section as amended by Laws of 1957, chapter 28, added wages must be added to the actual current salary and not to the minimum of $350 a month. Hill v. Billings, 134 M 282, 328 P 2d 1112, 1115, decided prior to enactment of section 11-1832.1 and explained in 139 M 343, 345, 363 P 2d 720.

Where a policeman's salary for one fiscal year was a stated amount which was calculated to include the longevity to which he was entitled, his "actual current salary" was the amount received other than for longevity, and the amount to which he is entitled for the next year is computed by adding his total longevity to the "actual current salary" rather than to the stated amount. State ex rel. Raw v. City of Helena, 139 M 343, 363 P 2d 720, 722.

Construction of Statute

If sections 11-1832 and 11-1833 contain any provisions in direct conflict with sections 11-1401 to 11-1413, known as the budget act, then sections 11-1832 and 11-1833 control as to such conflicts. State ex rel. Gebhardt v. City of Helena, 102 M 27, 41, 55 P 2d 671.

Collateral References

Municipal Corporations⇦186 (5).
62 C.J.S. Municipal Corporations § 586.

11-1832.1. Basis in computing added salary. Added salary for years of service will be based on the base monthly salary as established in this act and not on the actual current salary.

History: En. Sec. 2, Ch. 266, L. 1967.

11-1833. (5108.17) **Application of act.** That this act shall apply to and include all cities and towns not of the first class, which have heretofore elected, or may hereafter elect to come under the provisions of sections 11-1817 to 11-1830 inclusive.

History: En. Sec. 2, Ch. 55, L. 1935.

References

McBroom v. City of Polson, 137 M 33, 349 P 2d 1023, 1025.

11-1834. Annual state payments to municipality with police department. At the end of each fiscal year the state auditor shall issue and deliver to the treasurer of each city and town in Montana, having a police department, his warrant in an amount equal to the sum paid to that city or town for the use and benefit of its fire department relief association pursuant to the provisions of section 11-1919, R. C. M. 1947, as amended.

History: En. Sec. 1, Ch. 261, L. 1965.

11-1835. State payments to come from motor vehicle insurance premium tax. The payment provided for by section 11-1834 shall be paid from the premium tax collected on motor vehicle insurance sold in this state to insure against the following risks: motor vehicle physical damage; property damage; bodily injury. Such payments will only be made after deductions have been made from the gross premium tax for cancellations and returned premiums.

History: En. Sec. 2, Ch. 261, L. 1965.

11-1836. Credit of payments to reserve fund of police retirement system—annual report of board. Every city or town, having a police retirement system established under the provisions of the Metropolitan Police Law, shall deposit said payment to the credit of the police reserve fund of such city or town. The board of trustees of each police officer's reserve fund shall on or before the first day of April of each year report to the state auditor as to the financial condition of their fund.

History: En. Sec. 3, Ch. 261, L. 1965.

11-1837. Expenditure of funds by municipality not having police retirement system—annual report of treasurer. Any city or town not governed by the provisions of the police retirement system law, shall only expend said payment for police training or to purchase pensions for members of their police department. The city or town treasurer of such cities or towns shall on or before the first day of April of each year report to the state auditor as to the expenditures of all fund received pursuant to this act.

History: En. Sec. 4, Ch. 261, L. 1965.

CHAPTER 19

FIRE DEPARTMENT—FIREMEN'S DISABILITY AND PENSION FUND

Section 11-1901. Department to be established—application of chapter—mutual aid agreements.
11-1902. Fire department to consist of what—compensation.
11-1903. Powers of mayor or manager to suspend firemen.
11-1904. Reduction of force in reverse order of appointment.
11-1905. Qualifications of firemen.
11-1906. Duties of chief and assistant chief of fire department.
11-1907. Act applicable to existing departments.
11-1908. Volunteer companies not affected.
11-1909. Levy of tax for volunteer fire departments.
11-1910. Disability and pension fund.
11-1911. Source of fund.

11-1912. Tax levy for fund.
11-1913. Board of trustees.
11-1914. Duties of trustees—investment of surplus funds.
11-1915. Benefits, allowed for, how allowed, and how paid.
11-1916. Embezzlement of funds.
11-1917. Annual report of clerks of cities having fire department.
11-1918. Reports of insurers.
11-1919. State auditor to pay fire department relief association out of license fees collected from insurance companies.
11-1920. Estimate of payments.
11-1921. State treasurer to pay warrants.
11-1922. Fire department relief association.
11-1923. Annual report of the secretary and treasurer, prescribing qualifications for membership, official bond of the treasurer and examination of books and accounts.
11-1924. Duties of association and city treasurers.
11-1925. Pensions to retired firemen.
11-1926. Disability pension.
11-1927. Pensions to widows and orphans.
11-1928. Use of disability and pension fund of fire department relief association.
11-1929. Pensions exempt from legal process and nonassignable.
11-1930. Source and control of funds.
11-1931. Hours of work of members of paid fire departments in cities of first class.
11-1932. Minimum wages of firemen in cities of first and second class.
11-1932.1. Basis in computing added salary.
11-1933. Violation of this act shall be deemed a misdemeanor—penalty.
11-1934. Hours of work of members of paid fire departments in second class cities.
11-1935. Minimum wage of firemen in cities of second class.
11-1936. Volunteer fire departments—compensation.
11-1937. Supervision of volunteers.
11-1938. Violation of this act shall be deemed a misdemeanor—penalty.
11-1939. Rules and regulations governing fire departments.
11-1940. Appointment of chief engineer of fire department—his powers and duties.
11-1941. Limitation on liability of persons authorized to receive and transmit fire reports for delays.

11-1901. (5109) **Department to be established—application of chapter—mutual aid agreements.** (a) There shall be in every city and town of this state a fire department, which shall be organized, managed and controlled as in this chapter provided, which shall in all respects be applicable to and shall govern and control fire departments in every such city or town organized under whatever form of municipal government save and except where this act is in conflict with the commission form of government, provided for in sections 11-3101 to 11-3137, and amendments thereto; and where the provisions of this act do conflict with the provisions of said chapter and the amendments thereto pertaining to the commission form of government, then the provisions pertaining to the commission form of government shall prevail.

(b) A mutual aid agreement is an agreement for protection against natural or man-made disasters. Councils or commissions of incorporated municipalities may enter such agreements with the proper authority of:

(1) other incorporated municipalities

(2) fire districts

(3) unincorporated municipalities

(4) state agencies which have fire protection services

(5) private fire prevention agencies

(6) federal agencies.

History: En. Sec. 1, p. 73, L. 1899; re-en. Sec. 3326, Rev. C. 1907; re-en. Sec. 5109, R. C. M. 1921; amd. Sec. 1, Ch. 4, L. 1937; amd. Sec. 1, Ch. 97, L. 1947; amd. Sec. 1, Ch. 151, L. 1947; amd. Sec. 1, Ch. 73, L. 1949; amd. Sec. 3, Ch. 2, L. 1965.

Compiler's Note

Section 11-3124, contained in the reference referred to in subsection (a), was repealed by Sec. 11, Ch. 67, Laws 1967. For present law, see secs. 6-601 to 6-608.

City Operates Fire Department in Proprietary Capacity

Before amendment of this section in 1937, it was held that since, under this section and sections 11-929, 11-930 and 11-931, a city was empowered, but not compelled, to maintain a fire department, the city operated its fire department as a proprietary function, except when engaged in extinguishing or going to or from the scene of a fire, or testing equipment for such occasions, when it was exercising governmental functions. State ex rel. Kern v. Arnold, 100 M 346, 358, 49 P 2d 976.

Civil Service

Mandamus lies to reinstate a fireman who has been discharged in violation of the act placing paid fire departments under civil service rules. State ex rel. Driffill v. City of Anaconda, 41 M 577, 581, 111 P 345.

References

State ex rel. Daly v. Dryburgh, 62 M 36, 43, 203 P 508; State ex rel. Barry v. O'Leary, 83 M 445, 447, 272 P 677; State ex rel. Casey v. Brewer, 107 M 550, 557, 88 P 2d 49.

Collateral References

Municipal Corporations⇐194.
62 C.J.S. Municipal Corporations § 591.

Power of municipal corporation to extend its service beyond corporate limits. 49 ALR 1239 and 98 ALR 1001.

Use beyond municipal limits of municipal equipment for extinguishment of fires. 122 ALR 1158.

11-1902. (5110) **Fire department to consist of what—compensation.** Such fire department, when established, may consist of one chief of the fire department, as many assistant chiefs of the fire department, and such number of firemen as the council or commission may from time to time provide, and may also include a city electrician, and as many assistant electricians as the council or commission may from time to time provide. The compensation of the chief of the fire department and assistant chiefs of the fire department and firemen, in cities and towns where the council or commission shall establish a paid fire department, and said city electrician and assistant city electricians, shall be fixed by ordinance. The mayor or manager shall nominate, and, with the consent of the council or commission, appoint the chief of the fire department, and assistant chief or chiefs of the fire department, and all firemen, and each appointment shall be first made for a probationary term of six (6) months, and thereafter the mayor or manager may nominate, and, with the consent of the council or commission, appoint such chief and assistant chief or chiefs of the fire department and firemen, who shall thereafter hold their respective appointments during good behavior, and while they have the physical ability to perform their duties. The chief of the fire department, and the assistant chief or chiefs of the fire department, and the firemen, shall not be deemed officers of the municipal corporation in which such fire department is established.

History: En. Sec. 2, p. 73, L. 1899; re-en. Sec. 3327, Rev. C. 1907; amd. Sec. 1, Ch. 46, L. 1911; re-en. Sec. 5110, R. C. M. 1921; amd. Sec. 2, Ch. 151, L. 1947.

Conduct Unbecoming a Fire Chief

Charges of personal conduct unbecoming a fire chief were not so broad as to preclude the preparation of an effective defense where chief actively participated,

took over the examination, was fully aware of the proceedings, and was in no way prejudiced. The removed officer was given an opportunity for explanation and in attempting to explain, spelled out the behavior, or lack of good behavior set forth in this section. State ex rel. Burns v. City of Livingston, 144 M 248, 395 P 2d 971, 980. (Dissenting opinion, 144 M 248, 395 P 2d 971, 980.)

Evidence that fire chief did not have a driver's license for almost a year; that he was the licensee of a bar; and that he had been convicted twice of selling liquor to minors warranted his discharge for personal conduct unbecoming a fire chief. State ex rel. Burns v. City of Livingston, 144 M 248, 395 P 2d 971, 979. (Dissenting opinion, 144 M 248, 395 P 2d 971, 980.)

Fireman not a Municipal Officer

Section 11-705 has no application to a fireman, since this section declares that he is not to be deemed a municipal officer. State ex rel. Driffill v. City of Anaconda, 41 M 577, 581, 111 P 345.

References

State ex rel. Russ v. Fire Department Relief Assn. of City of Missoula, 114 M 430, 435, 136 P 2d 989.

Collateral References

Municipal Corporations⊂⊃194 et seq.
62 C.J.S. Municipal Corporations § 591.

11-1903. (5111) **Powers of mayor or manager to suspend firemen.** The mayor or manager may suspend the chief and assistant or any fireman of the fire department for neglect of duty or a violation of any of the rules and regulations of the fire department; the chief of the fire department may suspend the assistant chief of the fire department or any fireman, and the assistant chief of the fire department may suspend any fireman for a like cause. In all cases of suspension the person suspended must be furnished with a copy of the charge against him in writing, setting forth reasons for the suspension, and such charges must be presented to the next meeting of the council or commission and a hearing had thereon, when the suspended member of the fire department may appear in person or by counsel and make his defense to said charges; if such charges are found proven by the council or commission, the council or commission, by a vote of a majority of the whole council or commission, may impose such penalty as it shall determine the offense warrants, either in the continuation of the suspension for a time limited, or in the removal of the suspended person from the fire department; should the charges be not presented to the next meeting of the council or commission after the suspension, or should the charges be found not proven by the council or commission, the suspended person shall be reinstated and be entitled to his usual compensation for the time so suspended. This act shall apply to organized fire departments in every city and town of the state of Montana regardless of the form of government under which said city or town may be operating or may at any time adopt.

History: En. Sec. 3, p. 74, L. 1899; re-en. Sec. 3328, Rev. C. 1907; re-en. Sec. 5111, R. C. M. 1921; amd. Secs. 3 and 4, Ch. 151, L. 1947.

Conduct Unbecoming a Fire Chief

Evidence that fire chief did not have a driver's license for almost a year; that he was the licensee of a bar; and that he had been convicted twice of selling liquor to minors warranted his discharge for personal conduct unbecoming a fire chief. State ex rel. Burns v. City of Livingston, 144 M 248, 395 P 2d 971, 979. (Dissenting opinion, 144 M 248, 395 P 2d 971, 980.)

Discharge without Suspension

Where fire chief was on sick leave, it was not necessary for the mayor to suspend him as a condition precedent to filing formal charges against him or holding a hearing thereon. State ex rel. Burns v. City of Livingston, 144 M 248, 395 P 2d 971, 974. (Dissenting opinion, 144 M 248, 395 P 2d 971, 980.)

Hearing of Charges

Charges of personal conduct unbecoming a fire chief were not so broad as to preclude the preparation of an effective defense where chief actively participated,

took over the examination, was fully aware of the proceedings, and was in no way prejudiced. The removed officer was given an opportunity for explanation and in attempting to explain, spelled out the behavior, or lack of good behavior set forth in section 11-1902. State ex rel. Burns v. City of Livingston, 144 M 248, 395 P 2d 971, 980. (Dissenting opinion, 144 M 248, 395 P 2d 971, 980.)

The three charging members of fire and police committee were not disqualified from sitting with city council to hear charges against fire chief since the council, under this section, had exclusive jurisdiction to hear the charges. State ex rel. Burns v. City of Livingston, 144 M 248, 395 P 2d 971, 979. (Dissenting opinion, 144 M 248, 395 P 2d 971, 980.)

Removal without Written Charges

If a fireman has been removed without written charges his action in asking for reinstatement after his discharge did not constitute a waiver of his right to be confronted with written charges, as there can be no waiver of a right that has been lost. State ex rel. Driffill v. City of Anaconda, 41 M 577, 582, 111 P 345.

References

State ex rel. Griffiths v. City of Butte, 57 M 368, 188 P 367; State ex rel. Wentworth v. Baker, 101 M 226, 229, 53 P 2d 440.

Collateral References

Municipal Corporations⊂=198 (1-5).

62 C.J.S. Municipal Corporations §§ 609, 611.

11-1904. (5112) **Reduction of force in reverse order of appointment.** Should the council at any time reduce the number of firemen in the fire department, those most recently appointed shall be selected for retirement from the fire department, and the city or town clerk shall keep a list of such retired firemen, and should the number of firemen be again increased by the council, the men on said list shall be called into service, the longest service firemen being first selected for service in the fire department.

History: En. Sec. 4, p. 74, L. 1899; re-en. Sec. 3329, Rev. C. 1907; re-en. Sec. 5112, R. C. M. 1921.

Action of Council not Discretionary

The city council must, if it deems it necessary to reduce the number of paid firemen, retire the one last appointed, and may not exercise any discretion in the premises and discharge the one thought least efficient even though oldest in point of service. State ex rel. Driffill v. City of Anaconda, 41 M 577, 584, 111 P 345.

11-1905. (5113) **Qualifications of firemen.** The qualifications of firemen shall be that they shall be qualified voters of the city or town, not, at the time of original appointment, over thirty-one (31) years of age, and shall have passed a physical examination by a practicing physician duly authorized to practice in this state, which examination shall be in writing and filed with the city or town clerk. Such examination shall disclose the ability of such applicant to perform the physical work usually required of firemen in the performance of their duty.

History: En. Sec. 5, p. 74, L. 1899; re-en. Sec. 3330, Rev. C. 1907; re-en. Sec. 5113, R. C. M. 1921; amd. Sec. 1, Ch. 29, L. 1955.

Affidavit as to Qualifications

Where a discharged fireman seeks reinstatement by mandamus, a statement in his affidavit that he had been duly appointed and confirmed as a member of the fire department, and that at all times he had the physical ability to perform his duties as such, was a sufficient allegation that he possessed the qualifications of a fireman as defined by this section; otherwise he would not have been appointed in the first instance. State ex rel. Driffill v. City of Anaconda, 41 M 577, 581, 111 P 345.

Right to Membership in Relief Association

In a proceeding in mandamus to compel the defendant fire department relief association to accept relator's application for membership in such association, where it was shown that relator was carried on the city payroll for a number of years as a mechanic, occasionally performing some of the duties of a fireman, but had never been confirmed as such, everything showing that the council had no intent to confirm him, that he was over 45 years of

age at his original appointment, held that he failed to show a clear legal right to membership or a legal duty of the association in the premises, hence writ properly denied. State ex rel. Russ v. Fire Department Relief Assn. of City of Missoula, 114 M 430, 433, 136 P 2d 989.

Collateral References

Municipal Corporations⇐197.
62 C.J.S. Municipal Corporations § 603.

11-1906. (5114) **Duties of chief and assistant chief of fire department.** The chief of the fire department shall have sole command and control over all persons connected with the fire department of the city or town, and shall possess full power and authority over its organization, government, and discipline, and to that end may from time to time establish such disciplinary rules and regulations as he may deem advisable, subject to the approval of the city or town council; he shall have charge of and be responsible for the engines and other apparatus, the property of the town or city furnished the fire department, and see that they are at all times ready for use in the extinguishing of fires. The assistant chief of the fire department shall aid the chief in the work of the department and in his absence shall perform his duties.

History: En. Sec. 6, p. 75, L. 1899; re-en. Sec. 3331, Rev. C. 1907; re-en. Sec. 5114, R. C. M. 1921.

Removal of Chief

While in cities of the first class operating under the commission form of government authorized by chapter 57, Laws of 1911, the members of the fire department are protected in their tenure by the provisions of the Firemen's Act (Rev. C. 1907, Sec. 3328, section 11-1903 herein), the chief of the department may be removed at any time by a majority vote of the council. State ex rel. Daly v. Dryburgh, 62 M 36, 203 P 508.

The chief of the fire department of a city operating under the commission form of government was removed by the council, his name, however, being restored to the roll of members, thus entitling him to the safeguards afforded him as such member under the civil service rules of the Firemen's Act. He later was suspended under subdivision (c) of section 25, chapter 57, Laws of 1911 (section 11-3128, subd. (5) herein), but a hearing on his appeal was not accorded him. Held, that failure to hear his appeal rendered the order of suspension of no effect, automatically reinstated him and entitled him to compensation during the period of his suspension. State ex rel. Daly v. Dryburgh, 62 M 36, 203 P 508.

References

State ex rel. Griffiths v. City of Butte, 57 M 368, 188 P 367.

Collateral References

Municipal Corporations⇐196.
62 C.J.S. Municipal Corporations § 597.

11-1907. (5115) **Act applicable to existing departments.** In cities and towns where fire departments are now established, organized, and existing, as provided in this act the same shall be deemed to be established hereunder.

History: En. Sec. 7, p. 75, L. 1899; re-en. Sec. 3332, Rev. C. 1907; re-en. Sec. 5115, R. C. M. 1921.

11-1908. (5116) **Volunteer companies not affected.** All acts and parts of acts in conflict herewith are hereby repealed; provided, that nothing herein contained shall be held or construed to affect any fire organization known as a volunteer fire company.

History: En. Sec. 10, p. 76, L. 1899; re-en. Sec. 3333, Rev. C. 1907; re-en. Sec. 5116, R. C. M. 1921.

11-1909. (5116.1) **Levy of tax for volunteer fire departments.** For the purpose of supporting volunteer fire departments in any city or town

which does not have a paid fire department, and for the purpose of purchasing the necessary equipment therefor, the council in any city or town, may assess and levy, in addition to other levies permitted by law, a special tax not exceeding two (2) mills on each dollar of the assessed valuation of the taxable property of the city or town; and, provided, further, that the words "assessed valuation" as used in this section shall be the percentage of the true and full valuation of the taxable property provided in section 84-302 and shall not be deemed to be the true and full valuation of such property.

History: En. Sec. 1, Ch. 26, L. 1927.

Authority To Abolish Volunteer Fire Department

This section and section 11-1940 together, clearly imply that a city government could abolish its volunteer fire department when in its judgment a paid department should be established in lieu thereof. State ex rel. Casey v. Brewer, 107 M 550, 557, 88 P 2d 49.

Collateral References

Municipal Corporations⇐961.
64 C.J.S. Municipal Corporations § 1992.

11-1910. (5117) **Disability and pension fund.** There shall be created and established in each incorporated city or town of the state of Montana where there is an organized fire department, recognized by city council, which said fire department has or shall hereafter form themselves into an association known as the fire department relief association of the city or town of ..... (name of the city or t wn) and incorporated under the laws of the state of Montana, a fund to be known as "disability and pension fund" of the fire department relief association of the city or town of ..... (naming the city or town) said fund to be held by the treasurer of such association, as provided by law, and to be kept in a separate fund. No fire department relief association shall be organized and incorporated under the provisions of this act, unless it is in an incorporated city or town of this state, and has a duly organized fire department, consisting of either paid, part-paid, or volunteer firemen, or any or all such firemen, which said fire department must have fire fighting equipment in serviceable condition, of the value of seven hundred fifty dollars ($750.00), or more, provided that the words "incorporated city or town" appearing in this act shall include any county seats whether incorporated or not.

History: En. Sec. 1, Ch. 71, L. 1907; Sec. 3334, Rev. C. 1907; re-en. Sec. 5117, R. C. M. 1921; amd. Sec. 1, Ch. 58, L. 1927.

Association Benefits for Members of Organized Fire Departments Only

To entitle a fireman to the benefits of the disability and pension fund of the firemen's relief association, under this section, he must be a member of an organized fire department, whether it be a paid or voluntary one, and confirmed as such by the city or town council (sections 11-1922 and 11-1923); hence where a volunteer department was abolished, a member thereof may no longer qualify as an eligible one of the relief association. State ex rel. Casey v. Brewer, 107 M 550, 556, 88 P 2d 49.

Collateral References

Municipal Corporations⇐200.
62 C.J.S. Municipal Corporations § 614.

11-1911. (5118) **Source of fund.** The disability and pension fund of the fire department relief association of such city or town shall consist of all bequests, fees, gifts, emoluments or donations given or paid to such fund, or any of its members, except as otherwise designated by the donor, and a monthly fee which shall be paid into the fund by each paid member

and part-paid member of said fire department relief association amounting to six per cent (6%) of his regular monthly salary, the proceeds of a tax levy as provided by section 11-1912, R. C. M. 1947, and all moneys received from the state of Montana as provided for by section 11-1919, R. C. M. 1947, and the interest of any portion of such fund.

Any such paid or part-paid fireman shall be entitled to a return, in lump sum, without interest, of all monthly contributions made by him to such funds, within sixty (60) days of his permanent separation from service in the fire department of such city, town or municipality, except separation by reason of retirement, death or disability, which would otherwise qualify such separated fireman, his widow or orphans, to benefits or allowances from such fire department relief association.

History: En. Sec. 2, Ch. 71, L. 1907; Sec. 3335, Rev. C. 1907; re-en. Sec. 5118, R. C. M. 1921; amd. Sec. 2, Ch. 58, L. 1927; amd. Sec. 1, Ch. 43, L. 1939; amd. Sec. 1, Ch. 208, L. 1967.

11-1912. (5119) **Tax levy for fund.** For the purpose of maintaining said disability and pension funds of such fire department relief association, in an amount equal to two per centum (2%) of the taxable valuation of all taxable property within the limits of any city, town or municipality, the city or town council or the commission or such other proper authority of any municipality, as is now or may hereafter be established, under special or local laws passed by the legislative assembly and adopted by the electors within such city, town or municipality, entitled to vote thereon, at all times when the said relief association fund is in a total amount of less than two per centum (2%) of the taxable valuation of all taxable property within the limits of the city, town or municipality, shall, annually, in the manner provided by law, at the time of the levy of the annual tax, levy a special tax as hereinbelow set forth, which said special tax shall be collected as other taxes are collected and when so collected shall be paid into the disability and pension fund of the fire department relief association of said city, town or municipality:

1. Whenever the total amount of a fire department relief association's fund is less than two per centum (2%) of the taxable valuation of all taxable property within the limits of the city, town or municipality, the special tax levy shall be not less than one (1) mill nor more than four (4) mills on each dollar of taxable valuation of all property assessed for taxes within the limits of said city, town or municipality; and said special tax levy shall be an amount sufficient as will provide a growth per year in such fire department relief association's fund, considering all sources of income to such fund and the payment of obligations out of such fund, in an amount equal to the sum produced by one (1) mill levied on the taxable valuation of all the taxable property in said city, town or municipality.

2. Whenever the total amount of the fire department relief association's fund is less than two per centum (2%) of the taxable valuation of all taxable property within said city, town or municipality, but more than one per centum (1%) of said taxable valuation, and when the special tax levy of one (1) mill on each dollar of taxable valuation within said city,

town or municipality will cause such fund, considering all sources of income, and all payments to be made out of such fund, to exceed two per centum (2%) of the taxable valuation of all taxable property in said city, town or municipality.

3. In cities of the third class, when the fire department relief association's disability and pension fund contains an amount of less than two per centum (2%) of all taxable property within the city limits of the city, town or municipality, the city council may levy an annual special tax not to exceed four (4) mills on the dollar of all taxable valuation of all taxable property assessed within the said city, town or municipality.

History: En. Sec. 3, Ch. 71, L. 1907; Sec. 3336, Rev. C. 1907; re-en. Sec. 5119, R. C. M. 1921; amd. Sec. 3, Ch. 58, L. 1927; amd. Sec. 1, Ch. 43, L. 1931; amd. Sec. 2, Ch. 43, L. 1939; amd. Sec. 1, Ch. 159, L. 1945; amd. Sec. 1, Ch. 183, L. 1949; amd. Sec. 1, Ch. 107, L. 1959; amd. Sec. 1, Ch. 24, L. 1965; amd. Sec. 2, Ch. 208, L. 1967.

Collateral References

Municipal Corporations⇐961.

64 C.J.S. Municipal Corporations § 1992.

11-1913. (5120) **Board of trustees.** A board of trustees of such fire department relief association shall be created to consist of seven (7) members, to wit, the president of the fire department relief association, and the chief of the fire department, if an active member of the association, shall be ex officio members thereof, and five members to be elected by the members of such association at the annual election of each year, to be held on or before the fifteenth day of April of each year.

History: En. Sec. 4, Ch. 71, L. 1907; Sec. 3337, Rev. C. 1907; re-en. Sec. 5120, R. C. M. 1921; amd. Sec. 4, Ch. 58, L. 1927.

11-1914. Duties of trustees — investment of surplus funds. The board of trustees of said fire department relief association shall audit the account of the association at least every six (6) months and shall report the condition thereof at the next regular meeting of said association. The general management of the association shall be vested in the board of trustees. When so directed by a majority vote of the members of the association, the board of trustees shall have the power to invest the surplus funds of the association or any part thereof, in any time or saving deposits, in bonds or other securities of the United States government, in general obligation bonds or warrants of any state, county or city as are recommended by the state auditor and approved by the state examiner. At the time of purchase such investments must be stamped in boldface type, substantially as follows: "Property of the ..... Fire Department Relief Association, and negotiable only upon the order of the board of trustees of such association."

History: En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R. C. M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; amd. Sec. 1, Ch. 9, L. 1963.

11-1915. (5123) **Benefits, allowed for, how allowed, and how paid.** Every fire department relief association may allow to its members benefits for the following causes, as provided by law.

1. A service pension to a member who, by reason of service, has become entitled to a service pension.

2. To a member who has become maimed or disabled for life in line of duty.

3. To a member who has suffered injury in line of duty.

4. To a member who has contracted sickness in line of duty.

5. Funeral expenses of a member.

6. Pensions to the widow, orphan or orphans of a deceased member.

All applications for relief shall be referred to the board of trustees. All claims shall be referred to the board of trustees for allowance or disallowance and claimant shall have the right to appeal to the association in the event his claim be disallowed. All claims shall be paid by warrant, duly authorized, drawn by the secretary, and countersigned by the president of the association, and on presentation thereof, the treasurer of the association shall pay the same out of the said pension and disability fund.

History: En. Sec. 7, Ch. 71, L. 1907; Sec. 3340, Rev. C. 1907; re-en. Sec. 5123, R. C. M. 1921; amd. Sec. 6, Ch. 58, L. 1927; amd. Sec. 3, Ch. 208, L. 1967.

Incapacity Due to Illness

Under this section, a city fireman may properly be awarded benefits from the firemen's disability fund for incapacity from duty caused by illness in an amount equal to his monthly salary during the time of such incapacity, and in such case the provisions of sections 11-1925 and 11-1926, providing for a service pension and limiting it to one-half the monthly salary last received by such member have no application. State ex rel. Barry v. O'Leary, 83 M 445, 449, 450, 272 P 677.

Pensioner without Vested Right in Pension

A pension granted by the public authorities is not a contractual obligation but a gratuitous allowance in the continuance of which the pensioner has no vested right, the pension being terminable at the will of the grantor; a city council may abolish its volunteer fire department when in its judgment a paid department should be established and may also destroy the membership of a volunteer member in the firemen's relief association. State ex rel. Casey v. Brewer, 107 M 550, 557, 88 P 2d 49, explained in 122 M 191, 195, 196, 199 P 2d 965.

Collateral References

Municipal Corporations⇐200.
62 C.J.S. Municipal Corporations § 614.
40 Am. Jur. 975, Pensions, §§ 18, 19.

Misconduct as affecting right to pension or retention of position in retirement system. 76 ALR 2d 566.

11-1916. (5124) **Embezzlement of funds.** Any person who shall embezzle any of the money or other valuable thing belonging to the disability and pension fund of any fire department relief association, or who shall take part, in, or in any manner aid in any scheme or plan whereby said fund or association shall be defrauded out of any of the money in said fund, shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the state prison for not less than one year or more than ten years.

History: En. Sec. 8, Ch. 71, L. 1907; Sec. 3341, Rev. C. 1907; re-en. Sec. 5124, R. C. M. 1921; amd. Sec. 7, Ch. 58, L. 1927.

Collateral References

Embezzlement⇐11 (2).
29A C.J.S. Embezzlement § 11.

11-1917. (5125) **Annual report of clerks of cities having fire department.** On or before October 31st, annually, the clerk of every city having an organized fire department, or a partly paid or volunteer department, shall file with the commissioner of insurance of this state his certificate stating such fact, the system of water supply in use in such fire depart-

ment, the number of its organized companies, steam, hand, or other engines, hook-and-ladder trucks, hose-carts, and feet of hose in actual use, and such other facts as the commissioner may require.

History: En. Sec. 1, Ch 129, L. 1911; re-en. Sec. 5125, R. C. M. 1921.

Collateral References
Insurance⇐9.
44 C.J.S. Insurance § 73.

11-1918. (5126) **Reports of insurers.** The commissioner of insurance shall furnish to each insurer authorized to effect insurance against risks enumerated in subsection 2 of section 11-1919 for its annual statement, a list of all such incorporated cities or towns, and each insurer shall report therein the amount of the fire portion of the direct premiums, after deducting cancellations and return premiums, received by it during the preceding year in each incorporated city or town. Before July 1 following the said October 31, mentioned in preceding sections, the commissioner of insurance shall certify to the state auditor the name of each city or town which has an organized fire department and fire department relief association which has complied with provisions of section 11-1910, which has been so reported to him and the amount of the fire portion of the direct premiums after deducting cancellations and return premiums, received in each such city or town in such year by each insurer authorized to effect insurance on risks enumerated in subsection 2 of section 11-1919.

History: En. Sec. 2, Ch. 129, L. 1911; re-en. Sec. 5126, R. C. M. 1921; amd. Sec. 8, Ch. 58, L. 1927; amd. Sec. 1, Ch. 126, L. 1947; amd. Sec. 1, Ch. 22, L. 1955; amd. Sec. 1, Ch. 184, L. 1959.

11-1919. (5127) **State auditor to pay fire department relief association out of license fees collected from insurance companies.** At the end of the fiscal year, the state auditor shall issue and deliver to the treasurer of every city or town of the first and second class, for the use and benefit of the fire department relief association legally existing in every such city or town entitled by law to receive the same, out of the license fees on insurance risks collected by him, an amount equal to ten per centum (10%) of the total annual compensation paid by such city or town to its paid or part-paid firemen for services in the previous calendar year. The city clerk of each such city or town shall certify in writing to the state auditor, on or before March 1 of each year, the amount so paid by such city or town as compensation for services to paid or part-paid firemen.

1. At the end of the fiscal year, the state auditor shall issue and deliver to the treasurer of every city or town, except cities or towns of the first or second class, for the use and benefit of the fire department relief association legally existing in every such city or town entitled by law to receive the same, his warrant for an amount equal to the taxes upon the fire portion of the direct premiums after deducting cancellations and return premiums, collected by the state auditor, ex officio insurance commissioner, from insurers authorized to effect insurance on risks enumerated in subsection 2 of this section, as said cities or towns are each severally entitled to, computed as follows:

(a) Each and every fire department relief association legally organized and existing in any city or town, except cities or towns of the first or second class, and entitled by law to receive the same shall receive, as its portion of the total taxes on premiums collected from insurers authorized to effect insurance on risks enumerated in subsection 2 of this section, the fire portion of the direct premiums, after deducting cancellations and return premiums, assessed and collected by insurers authorized to effect insurance on risks enumerated in subsection 2 of this section in the said city or town.

(b) The legally organized and existing fire department relief associations in all cities or towns where the taxes on premiums collected and distributed pursuant to subdivision (a) above is insufficient to make an amount equal to one hundred dollars ($100) shall receive such additional amount from the total taxes on premiums collected from insurers authorized to effect insurance against risks enumerated in subsection 2 of this section as may be necessary to make the total amount received by said fire department relief association equal to the sum of one hundred dollars ($100).

2. The risks referred to in subsection 1 above, are enumerated as follows: Insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty, and all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether on land or water or air; insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils; insurance of growing crops against loss or damage resulting from hail or the elements; insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps or other apparatus; and insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles whether by accident or collision or by explosion of any engine or tank or boiler or pipe or tire of any vehicle, and also including insurance against theft of the whole or any part of any vehicle.

History: En. Sec. 3, Ch. 129, L. 1911; amd. Sec. 1, Ch. 49, L. 1915; re-en. Sec. 5127, R. C. M. 1921; amd. Sec. 9, Ch. 58, L. 1927; amd. Sec. 1, Ch. 127, L. 1933; amd. Sec. 1, Ch. 15, L. 1935; amd. Sec. 1, Ch. 127, L. 1947; amd. Sec. 1, Ch. 183, L. 1959; amd. Sec. 1, Ch. 54, L. 1963; amd. Sec. 4, Ch. 208, L. 1967.

NOTE.—See in connection with this section, section 11-2030.

References

Equitable Life Assur. Society of the United States v. Hart, 55 M 76, 86, 173 P 1062.

Collateral References

Insurance⇦7.
44 C.J.S. Insurance § 71.

11-1920. (5127.1) **Estimate of payments.** The state auditor shall estimate the portion of premium taxes needed to make the payments required by this act and shall pay an amount equal to the estimate into the state treasury, to the credit of the earmarked revenue fund. Any balances remaining after such payments have been ordered shall be transferred to the general fund.

History: En. Sec. 2, Ch. 15, L. 1935; amd. Sec. 69, Ch. 147, L. 1963.

Collateral References

Municipal Corporations⇐200.

62 C.J.S. Municipal Corporations § 614.

40 Am. Jur. 975, Pensions, §§ 18, 19.

Misconduct as affecting right to pension or retention of position in retirement system. 76 ALR 2d 566.

11-1921. (5128) **State treasurer to pay warrants.** The state treasurer is hereby authorized and directed, upon the presentation to him of a warrant drawn pursuant to this act, to pay to the treasurer of any such city or town, out of moneys in the earmarked revenue fund dedicated for such purpose, the amount of such warrant specified, which amount shall be paid by said city treasurer to said fire department relief association.

History: En. Sec. 4, Ch. 129, L. 1911; re-en. Sec. 5128, R. C. M. 1921; amd. Sec. 10, Ch. 58, L. 1927; amd. Sec. 70, Ch. 147, L. 1963.

11-1922. (5129) **Fire department relief association.** The confirmed members of the fire department or departments, together with the volunteer fire department or departments recognized by the city or town council in each incorporated city or town of this state are hereby authorized to form themselves into a local association, to be known as the fire department relief association of the city or town of ..... (naming the city or town), and when so formed, it shall incorporate under the laws of this state. In the event of the formation of such fire department relief association, there shall be elected by a majority vote of the members thereof, the following officers, to wit: A president, a secretary, a treasurer, and three members to serve as members of the board of trustees, which said board of trustees shall consist of five members, of which the chief of the fire department, and the president of the fire department relief association shall be ex officio members thereof. After the incorporation of any such fire department relief association, the said elective officers shall be elected annually on or before the fifteenth day of April of each year.

History: En. Sec. 5, Ch. 129, L. 1911; re-en. Sec. 5129, R. C. M. 1921; amd. Sec. 11, Ch. 58, L. 1927.

References

State ex rel. Casey v. Brewer, 107 M 550, 556, 88 P 2d 49.

Collateral References

40 Am. Jur. 975, Pensions, §§ 18, 19.

Misconduct as affecting right to pension or retention of position in retirement system. 76 ALR 2d 566.

11-1923. (5130) **Annual report of the secretary and treasurer, prescribing qualifications for membership, official bond of the treasurer and examination of books and accounts.** (1) The secretary and treasurer of every fire department relief association so formed shall annually prepare a detailed report of its receipts and expenditures for the preceding year, showing to whom and for what purposes the money has been paid and expended, and file it with the association, and a duplicate with the state auditor. No money shall be paid to the treasurer of such fire department relief association until such report is so filed. No one serving as a substitute or on probation, nor any person who has not been confirmed a member of an organized fire department is eligible for membership in the relief association. No treasurer of any such association shall enter upon

his duties until he has given to the association a good and sufficient bond of not less than fifty per cent (50%) of the amount of the cash funds and securities of the association, for the faithful performance of his duties according to law, the amount of such bond to be approved and paid for by such association. Provided, however, that in no case shall such official bond be in excess of the amount of twenty-five thousand dollars ($25,000.00).

(2) Provided further, that upon a majority vote of the members of the association, the city or town treasurer shall be ex officio treasurer of the fire department relief association and the official bond of such city or town treasurer shall cover the faithful discharge of his duties as ex officio treasurer of the fire department relief association, and the cash in the firemen's relief fund shall have the same protection as to depository securities furnished by banks, as the other funds of the city or town. All of the financial books and accounts of such association with reference thereto shall be subject at all times to examination by the state examiner.

(3) The state examiner is hereby authorized, empowered and required to make such examination at least once each year, for which service the association shall pay to the state treasurer on or before the first day of July of each year, in all cases where the fund is in excess of one thousand dollars ($1,000.00) and less than five thousand dollars ($5,000.00), a fee in the amount of ten dollars ($10.00); from five thousand dollars ($5,000.00) to ten thousand dollars ($10,000.00), a fee in the amount of twenty-five dollars ($25.00), and where the fund is ten thousand dollars ($10,000.00) and over, a fee in the amount of thirty-five dollars ($35.00), which shall be credited to the state general fund. Upon complaint being duly made to him that the money or any part thereof paid under the provisions of this act to the treasurer of such association has been or is being expended for any unauthorized purpose, and if such money upon examination is found to have been expended contrary to the authority given, he shall so report to the governor, upon whose directions to the state auditor, no further warrants shall be issued to such fire department relief association treasurer until the money so expended has been returned.

History: En. Sec. 6, Ch. 129, L. 1911; re-en. Sec. 5130, R. C. M. 1921; amd. Sec. 12, Ch. 58, L. 1927; amd. Sec. 1, Ch. 137, L. 1929; amd. Sec. 2, Ch. 30, L. 1933; amd. Sec. 1, Ch. 39, L. 1949; amd. Sec. 1, Ch. 67, L. 1953.

Effect of Abolishment on Membership of Association

Where a volunteer fire department had been abolished upon the creation of a paid department, the volunteer members were no longer members of the relief association, an election of a treasurer by such members was illegal, and a treasurer elected by the members of the paid department was entitled to the possession of the property and funds of the association; courts may take judicial notice of the articles of incorporation in passing upon qualifications of members. State ex rel. Casey v. Brewer, 107 M 550, 558, 88 P 2d 49.

References

State ex rel. Russ v. Fire Department Relief Assn. of City of Missoula, 114 M 430, 434, 136 P 2d 989.

Collateral References

Municipal Corporations⊂=200.
62 C.J.S. Municipal Corporations § 615.

11-1924. (5131) **Duties of association and city treasurers.** Whenever such fire department relief association is formed as provided by law and when the treasurer of such association has furnished the bond as provided by law, such city treasurer shall pay to said fire department relief asso-

ciation treasurer all money in the hands of the city treasurer to the credit of said disability and pension fund taking the receipt of said treasurer and said city treasurer shall thereafter from time to time, as moneys are received by him for the credit of said fund or association turn the same over to the treasurer of said relief association, taking proper receipts therefor.

History: En. Sec. 7, Ch. 129, L. 1911; re-en. Sec. 5131, R. C. M. 1921; amd. Sec. 13, Ch. 58, L. 1927.

11-1925. (5132) **Pensions to retired firemen.** Each and every fire department relief association organized and existing under the laws of this state shall pay to each of its members who elect to retire from active service after having completed twenty (20) years or more of active duty and has reached the age of fifty (50) years as a fully paid member of a paid, or partly paid and partly volunteer fire department of the city or town wherein such association has been formed, out of any money in the association's "disability and pension fund," a "service pension" in an amount which shall be equal to one-half (½) of the sum last received by the member as a monthly compensation for his services as an active member of said fire department. However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) per year of such additional service, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department. In case of volunteer men the compensation shall in no event exceed the sum of seventy-five dollars ($75) per month.

A member of a pure volunteer fire department who has served twenty (20) years or more as an active member of such fire department, without qualifying as to any provisions pertaining to an attained age, shall be entitled to the benefits provided for by this act.

History: En. Sec. 8, Ch. 129, L. 1911; amd. Sec. 1, Ch. 66, L. 1919; re-en. Sec. 5132, R. C. M. 1921; amd. Sec. 14, Ch. 58, L. 1927; amd. Sec. 1, Ch. 73, L. 1939; amd. Sec. 1, Ch. 98, L. 1945; amd. Sec. 1, Ch. 194, L. 1949; amd. Sec. 1, Ch. 56, L. 1963; amd. Sec. 5, Ch. 208, L. 1967.

Incapacity Due to Illness

Under section 11-1915, a city fireman may properly be awarded benefits from the firemen's disability fund for incapacity from duty caused by illness in an amount equal to his monthly salary during the time of such incapacity, and in such a case the provisions of this section and section 11-1926, providing for a service pension and limiting it to one-half the monthly salary last received by such member have no application. State ex rel. Barry v. O'Leary, 83 M 445, 449, 450, 272 P 677.

References

State ex rel. Casey v. Brewer, 107 M 550, 556, 88 P 2d 49.

Collateral References

Municipal Corporations⇨200.

62 C.J.S. Municipal Corporations § 614.

Retroactive application of fireman's or policeman's pension statutes. 27 ALR 2d 978.

11-1926. (5133) **Disability pension.** Each and every fire department relief association, organized and existing under the laws of this state, shall pay a "disability pension," out of any moneys in the association's

"disability and pension fund," to each and every member of said association who has become injured or disabled by reason of sickness or injury contracted or received in line of duty, in an amount which shall be equal to one-half (½) of the sum last received as a monthly compensation by such injured or disabled member for services rendered the fire department of the city or town wherein such association has been formed. However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) per year of such additional service, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department. In case of volunteer firemen such disability pension shall in no event exceed the sum of seventy-five ($75) dollars per month.

History: En. Sec. 9, Ch. 129, L. 1911; amd. Sec. 2, Ch. 66, L. 1919; re-en. Sec. 5133, R. C. M. 1921; amd. Sec. 15, Ch. 58, L. 1927; amd. Sec. 2, Ch. 73, L. 1939; amd. Sec. 2, Ch. 98, L. 1945; amd. Sec. 2, Ch. 56, L. 1963; amd. Sec. 6, Ch. 208, L. 1967.

Incapacity Due to Illness

Under section 11-1915, a city fireman may properly be awarded benefits from the firemen's disability fund for incapacity from duty caused by illness in an amount equal to his monthly salary during the time of such incapacity, and that in such a case the provisions of section 11-1925 and this section, providing for a service pension and limiting it to one-half the monthly salary last received by such member have no application. State ex rel. Barry v. O'Leary, 83 M 445, 449, 450, 272 P 677.

References

State ex rel. Casey v. Brewer, 107 M 550, 556, 88 P 2d 49; Griffin v. Industrial Accident Fund, 111 M 110, 117, 106 P 2d 346.

DECISIONS UNDER FORMER LAW

Workmen's Compensation Proviso Unconstitutional

The provisions of this section clearly impair an obligation of contract and must be declared unconstitutional in so far as they prohibit a fireman or his widow or orphan from receiving payments from the disability and pension fund if they are also receiving payments under the Workmen's Compensation Act (92-101 et seq.). State ex rel. Evans v. Fire Department Relief Assn., 138 M 172, 355 P 2d 670, 672.

11-1927. (5134) **Pensions to widows and orphans.** Each and every fire department relief association, organized and existing under the laws of this state, shall pay to the widow or orphans of a deceased member of said association, who, on the date of his decease, was an active member of the fire department in the city or town wherein such association has been formed, or had elected to retire from active service of said fire department and receive a "service pension" as provided for by section 11-1925, or prior to his decease had suffered a sickness or injury, and was receiving or was qualified to receive a "disability pension," as provided by section 11-1926, out of any money in relief association's "disability and pension fund," a monthly pension in an amount which shall be equal to one-half (½) of the monthly compensation last received by such deceased member for his services as an active member of the fire department in the city or town wherein such association has been formed. However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member

elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) per year of such additional service, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department. Provided, that said pension shall be paid to the within named widow only so long as she remains unmarried, and further provided, that a widow of a deceased fireman shall not be entitled to the pension, provided for by this act, in those cases where the marriage was consummated after the fireman had elected to retire from active service and received a "service pension" as provided for by section 11-1925; or in those cases where the marriage was consummated after the fireman had qualified and was receiving a "disability pension" as provided for by section 11-1926. Provided further, that the pension herein provided for shall not be paid to the orphans of deceased firemen after they have attained the age of eighteen (18) years. In case of volunteer firemen such pension shall in no event exceed the sum of seventy-five ($75) dollars per month.

History: En. Sec. 10, Ch. 129, L. 1911; re-en. Sec. 5134, R. C. M. 1921; amd. Sec. 16, Ch. 58, L. 1927; amd. Sec. 3, Ch. 73, L. 1939; amd. Sec. 3, Ch. 98, L. 1945; amd. Sec. 3, Ch. 56, L. 1963; amd. Sec. 7, Ch. 208, L. 1967.

11-1928. (5135) **Use of disability and pension fund of fire department relief association.** Said fund shall not be used for any other purpose whatsoever, other than for the payment of the following:

1. A service pension to a member who, by reason of service, has become entitled to a service pension.

2. A pension to a member who has become permanently maimed or disabled in line of duty.

3. A benefit or allowance to a member who has suffered a permanent disabling injury in line of duty.

4. A benefit or allowance to a member who has contracted a permanent disabling sickness in line of duty.

5. To defray the funeral expenses of a member, in an amount not to exceed, however, the sum of seven hundred fifty dollars ($750).

6. Payment to the widow, orphan or orphans of a deceased member as provided by law.

7. The payment of premiums upon a blanket policy of insurance covering the members of such fire department and providing for payment of compensation in case of death or injury to such member or any of them.

8. The return of employee contribution as provided by law.

9. All claims shall be paid by warrant duly authorized, drawn by the secretary, and countersigned by the president of the association and on presentation thereof, the treasurer shall pay the same out of the said disability and pension fund.

History: En. Sec. 11, Ch. 129, L. 1911; re-en. Sec. 5135, R. C. M. 1921; amd. Sec. 17, Ch. 58, L. 1927; amd. Sec. 1, Ch. 103, L. 1931; amd. Sec. 8, Ch. 208, L. 1967.

References

State ex rel. Casey v. Brewer, 107 M 550, 557, 88 P 2d 49.

Collateral References

40 Am. Jur. 975, Pensions, §§ 18, 19.

Misconduct as affecting right to pension or retention of position in retirement system. 76 ALR 2d 566.

11-1929. (5136) **Pensions exempt from legal process and nonassignable.** Any payments made or to be made hereunder shall not be subject to judgments, garnishment, execution, or other legal process, and any person entitled to such pension shall not have the right to assign the same, nor shall the association or trustees have the authority to recognize any assignment or pay over any sum so assigned.

History: En. Sec. 12, Ch. 129, L. 1911; re-en. Sec. 5136, R. C. M. 1921.

Collateral References

Exemptions⊂⇒49.
35 C.J.S. Exemptions § 43.

11-1930. (5137) **Source and control of funds.** Such association and such board of trustees shall have full charge, management, and control of the funds herein provided for, which said funds shall be derived from the following sources:

1. From interest, rents, gifts, or money from other sources.
2. From funds received from the state of Montana.
3. From moneys raised by taxation under section 11-1912 of this code.

History: En. Sec. 13, Ch. 129, L. 1911; re-en. Sec. 5137, R. C. M. 1921.

11-1931. Hours of work of members of paid fire departments in cities of first class. The city council, city commission, or other governing body in cities of the first class, shall divide all members of the paid fire department into platoons of three shifts. The members of each shift shall not be required to work or be on duty more than eight (8) hours of each consecutive twenty-four hours, except in the event of a conflagration or other similar emergency when such members or any of them may be required to serve so long as the necessity therefor exists. Each member shall be entitled to at least one (1) day off duty out of each eight-day period of service without loss of compensation.

History: En. Sec. 1, Ch. 15, L. 1937.

References

Griffin v. Industrial Accident Fund, 111 M 110, 114, 106 P 2d 346.

11-1932. Minimum wages of firemen in cities of first and second class. From and after July 1, 1967, there shall be paid to each duly appointed and confirmed member of the fire department of cities or towns of the first or second class of the state of Montana, a minimum wage for a daily service of eight (8) consecutive hours work of at least four hundred dollars ($400.00) per month for the first year of service, and thereafter of at least four hundred dollars ($400.00) minimum per month plus one per cent (1%) of said minimum base monthly salary four hundred dollars ($400.00) for each additional year of service up to and including the twentieth year of such additional service.

History: En. Sec. 1, Ch. 293, L. 1947; amd. Sec. 1, Ch. 51, L. 1951; amd. Sec. 1, Ch. 62, L. 1957; amd. Sec. 1, Ch. 267, L. 1967.

NOTE.—This section apparently supersedes Sec. 2, Ch. 15, Laws 1937. See Sec. 2, Ch. 293, Laws 1947, omitted from this code, which repeals Ch. 15, Laws 1935 in so far as it is in conflict with said Ch. 293. It appears that there is no part of Sec. 2, Ch. 15, Laws 1937 which does not conflict with the above enactment.

Collateral References

Municipal Corporations⊂⇒199.
62 C.J.S. Municipal Corporations § 612.

11-1932.1. Basis in computing added salary. Added salary for years of service will be based on the base monthly salary as established in this act and not on the actual current salary.

History: En. Sec. 2, Ch. 267, L. 1967.

11-1933. Violation of this act shall be deemed a misdemeanor—penalty. Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred ($100.00) dollars, or more than six hundred dollars ($600.00), or by imprisonment in the county jail for not less than thirty (30) days or more than seven (7) months, or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 15, L. 1937.

11-1934. Hours of work of members of paid fire departments in second class cities. The city council, city commission, or other governing body in cities of the second class, shall divide all members of the paid fire department into platoons of three shifts. The members of each shift shall not be required to work or be on duty more than eight (8) hours of each consecutive twenty-four hours, except in the event of a conflagration or other similar emergency when such members or any of them may be required to serve so long as the necessity therefor exists. Each member shall be entitled to at least one (1) day off duty out of each eight-day period of service without loss of compensation.

History: En. Sec. 1, Ch. 136, L. 1939.

Collateral References

Municipal Corporations⊂⊃194.

62 C.J.S. Municipal Corporations § 600.

11-1935. Minimum wage of firemen in cities of second class. There shall be paid to each member of the fire department of cities of the second class of the state of Montana a minimum wage for a daily service of eight (8) consecutive hours work of at least one hundred forty and no/100 dollars ($140.00) per month for the first year of service, and thereafter of at least one hundred forty and no/100 dollars ($140.00) per month, plus one dollar ($1.00) per month for each additional year of service up to and including the tenth (10th) year of such additional service, it being hereby expressly declared the purpose and intent of this act to fix the minimum wage of members of the fire department of said cities of the second class of the state of Montana at the sum of one hundred forty and no/100 dollars ($140.00) per month and to increase said compensation annually thereafter at the rate of not less than one dollar ($1.00) per month for each additional year of active service after the first year thereafter rendered by them, not exceeding ten (10) years of such service after the first year. Provided, that a new fireman, that is, a paid fireman when he is first employed shall for the first six (6) months following his employment be on probation during which time his pay shall be one hundred ten and no/100 dollars ($110.00) per month, thereafter, if he is still employed, his salary shall be one hundred forty and no/100 dollars ($140.00) per month plus one dollar ($1.00) per month for each additional year of service up to and including the tenth year of such additional service.

History: En. Sec. 2, Ch. 136, L. 1939.

NOTE.—The minimum monthly compensation provision of the above section was impliedly amended to increase the compensation to $350.00 per month by the enactment of Ch. 293, Laws 1947, as amended by Ch. 51, Laws 1951 and Ch. 62, Laws 1957 (11-1932). The above section remains in the code because not specifically repealed. See Sec. 2, Ch. 293, Laws 1947, omitted from this code, which repeals provisions of Ch. 136, Laws 1939 in so far as they conflict "only."

11-1936. Volunteer fire departments—compensation. In addition to a paid department, the city council, city commission or other governing body in cities of the second class may make provision for a volunteer fire department in addition to the paid fire department which said volunteer fire department shall be exempt from obligations in this act set out as applying to the paid department. Likewise shall the city commission or governing department be exempted as to compliance with this act in so far as the same may pertain to the said volunteer fire department by way of penalties and infringements; a volunteer being described as one who is an enrolled member of the volunteer fire department and assists the paid fire department; who is eligible to serve only on the board of trustees of the fire department relief association of such city, provided not more than three volunteer members are on said board of trustees, but who shall not be entitled to receive a "service pension." The governing body of said city may, at its discretion, pay an enrolled volunteer fireman the minimum of one dollar ($1.00) for attending a fire, and a minimum of one dollar ($1.00) for each hour or fraction of an hour after the first hour in active service at said fire, or returning any or all equipment to its proper place.

History: En. Sec. 3, Ch. 136, L. 1939.

Collateral References

Municipal Corporations⚖194.
62 C.J.S. Municipal Corporations § 595.

11-1937. Supervision of volunteers. In the attending of fires any volunteer shall act and serve under the supervision of the chief of the paid fire department.

History: En. Sec. 4, Ch. 136, L. 1939.

11-1938. Violation of this act shall be deemed a misdemeanor—penalty. Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred ($100.00) dollars, or more than six hundred ($600.00) dollars, or by imprisonment in the county jail for not less than thirty (30) days or more than seven (7) months, or by both such fine and imprisonment.

History: En. Sec. 5, Ch. 136, L. 1939.

11-1939. (5139) **Rules and regulations governing fire departments.** The city councils or commissioners of cities of the first and second class shall have power to establish and promulgate rules and regulations governing the employment of the members or employees of their respective fire departments not inconsistent with this act.

History: En. Sec. 2, Ch. 91, L. 1917; re-en. Sec. 5139, R. C. M. 1921.

Collateral References

Municipal Corporations⚖194.
62 C.J.S. Municipal Corporations § 591.

11-1940. (5140) **Appointment of chief engineer of fire department—his powers and duties.** The council of any city or town where there is no paid fire department may appoint a chief engineer of the fire department, to manage and control the fire engines and apparatus furnished by the city or town for the extinguishing and the prevention of fires, to superintend and direct all fire companies, and to examine and inspect all buildings, chimneys, flues, and boilers, and other things within the city or town, and require the same to be put in a safe condition or removed, if liable to cause fire. In case a paid fire department is established in any city or town, the council may by ordinance provide for the maintenance of the same, and the employment of the officers and employees thereof.

History: En. Sec. 4816, Pol. C. 1895; re-en. Sec. 3325, Rev. C. 1907; re-en. Sec. 5140, R. C. M. 1921.

Authority To Abolish Volunteer Fire Department

This section and section 11-1909 together clearly imply that a city government could abolish its volunteer fire department when in its judgment a paid department should be established in lieu thereof. State ex rel. Casey v. Brewer, 107 M 550, 557, 88 P 2d 49.

11-1941. Limitation on liability of persons authorized to receive and transmit fire reports for delays. No person, corporation, partnership or association which is authorized by any city, town, village or district fire department, or by any volunteer fire company to receive any report of fire or which agrees to receive and transmit such report to such fire department or volunteer fire company shall be liable in any civil action for damage to property or persons, including death, caused by delay in reporting or failure to report such fire, unless such delay or failure is the result of the gross negligence of such person, corporation, partnership or association.

History: En. Sec. 1, Ch. 42, L. 1955.

CHAPTER 20

FIRE PROTECTION IN UNINCORPORATED TOWNS—FIRE WARDENS, COMPANIES AND DISTRICTS

Section 11-2001. Appointment of and duties of fire warden.
11-2002. Removal of dangerous chimneys, etc.—penalty.
11-2003. Fire companies—how organized.
11-2004. Elect officers, make bylaws, exempt firemen.
11-2005. County clerk may issue exempt certificates.
11-2006. Seal and record of membership.
11-2007. Duties of chief.
11-2008. Fire protection — creation of fire districts — contracts with cities, towns and private service—dissolution and change of boundaries.
11-2009. Unconstitutional.
11-2010. Trustees of fire districts—mutual aid agreements.
11-2011 to 11-2019. Repealed.
11-2020. Volunteer Firemen's Compensation Act.
11-2021. Repealed.
11-2022. Disability, death, insurance and pension benefits.
11-2023. Qualification for compensation.
11-2024. Claim for compensation—contents—filing—limitation on time for filing—addition of name to pension list.
11-2025. Payment of claim—beneficiaries of decedent.
11-2026. Administration of act.

11-2027. Rules and regulations to be made by industrial accident board and board of administration of public employees' retirement system.
11-2028. Earnings to be part of moneys.
11-2029. Reports of industrial accident board and public employees' retirement system.
11-2030. Fire insurance premium tax to be paid into fund.
11-2031. Penalty for false statements or claims.

11-2001. (5141) **Appointment of and duties of fire warden.** The board of county commissioners must, upon petition of ten residents of any unincorporated city, town, or village in the county, appoint a fire warden for such city, town or village, whose duty it is to examine all chimneys, stoves, stovepipes, ovens, furnaces, boilers, and appurtenances thereto belonging.

History: En. Sec. 1, p. 101, L. 1876; re-en. Sec. 639, 5th Div. Rev. Stat. 1879; re-en. Sec. 1139, 5th Div. Comp. Stat. 1887; re-en. Sec. 3230, Pol. C. 1895; re-en. Sec. 2074, Rev. C. 1907; re-en. Sec. 5141, R. C. M. 1921.

11-2002. (5142) **Removal of dangerous chimneys, etc. — penalty.** When any chimney, stove, stovepipe, oven, furnace, boiler, or appurtenance thereto is defective, out of repair, or so placed in any building as to endanger it or any other building by communicating fire thereto, the fire warden, on complaint of any citizen, either orally or in writing, or upon his own examination, or other satisfactory proof, must give written notice to the owner or ocuupant of the building or premises, directing the owner or occupant to repair the same so as to make it secure against accident by fire; and he may in the notice require the occupant or owner to replace any defective flue or stovepipe with a new and safe one; and if the occupant or owner neglects for the space of three days to comply with the terms of said notice, he is guilty of a misdemeanor and punishable accordingly.

History: En. Sec. 2, p. 101, L. 1876; re-en. Sec. 640, 5th Div. Rev. Stat. 1879; re-en. Sec. 1140, 5th Div. Comp. Stat. 1887; re-en. Sec. 3231, Pol. C. 1895; re-en. Sec. 2075, Rev. C. 1907; amd. Sec. 1, Ch. 17, L. 1921; re-en. Sec. 5142, R. C. M. 1921.

Collateral References

Municipal Corporations⇐202.

62 C.J.S. Municipal Corporations §§ 594, 601.

11-2003. (5143) **Fire companies—how organized.** Fire companies in incorporated cities and towns are formed and organized under special laws, or under authority conferred upon the city or town government. Those in unincorporated towns and villages are organized by filing, with the county clerk of the county in which they are located, a certificate in writing, signed by the foreman or presiding officer and secretary, setting forth the date of the organization, name, officers, and roll of active and honorary members, which certificate and filing must be renewed every three months. There must not be allowed to any such towns or villages more than one company for each one thousand inhabitants, but one company must be allowed in any city, town, or village where the population is less than one thousand. There must not be allowed to any fire company more than twenty-eight certificate members.

History: En. Sec. 3232, Pol. C. 1895; re-en. Sec. 2076, Rev. C. 1907; re-en. Sec. 5143, R. C. M. 1921. Cal. Pol. C. Sec. 3335.

References

State ex rel. Peninsula Security Co. v. Board of County Commrs., 62 M 69, 70, 202 P 1108.

11-2004. (5144) **Elect officers, make bylaws, exempt firemen.** Every such fire company must choose or elect a foreman, who is the presiding officer, and a secretary and treasurer, and may establish and adopt bylaws and regulations, and impose penalties, not exceeding five dollars, or expulsion for each offense. The officers and members of unpaid fire companies regularly organized and exempt firemen are entitled to the following privileges and exemptions, viz.: Exemption from payment of poll tax, road tax, and head tax of every description; exemption from jury duty; exemption from military duty, except in case of war, invasion, or insurrection. Every fireman who has served five years in an organized company in this state is an "exempt fireman," and must receive from the chief engineer of the department to which he belonged a certificate to that effect. Every active fireman must have a certificate of that fact, signed by the chief of the fire department or the foreman of the company to which he belongs; such certificates must be countersigned by the secretary, and over the seal of the company, if one is provided. Each certificate entitles the holder to exemption from military and jury duty.

History: En. Sec. 3233, Pol. C. 1895; re-en. Sec. 2077, Rev. C. 1907; re-en. Sec. 5144, R. C. M. 1921.

Collateral References

Jury⇐55; Municipal Corporations⇐194, 672; Taxation⇐106.

50 C.J.S. Juries § 153; 62 C.J.S. Municipal Corporations §§ 598, 599; 64 C.J.S. Municipal Corporations § 1697; 84 C.J.S. Taxation § 57.

11-2005. (5145) **County clerk may issue exempt certificates.** In lieu of issuing certificates to exempt firemen by the chief of the fire department, as provided in the last section, on the certificate of the foreman and secretary of any fire company, or the chief of the department, provision being made therefor in the bylaws of the company, "exempt certificates" may be issued by the clerk of the county, over his official seal and signature, which entitles the holder to like exemption from military and jury duty.

History: En. Sec. 3234, Pol. C. 1895; re-en. Sec. 2078, Rev. C. 1907; re-en. Sec. 5145, R. C. M. 1921.

11-2006. (5146) **Seal and record of membership.** Every fire department regularly organized may adopt a department seal, the name of the particular fire department to which it belongs, which must be under the control of and for the use of the secretary, and be by him affixed to exempt certificates, certificates of active membership, and such other documents as the bylaws may provide. The secretary of every department having a seal must take the constitutional oath of office and give such bond as the bylaws provide for the faithful performance of his duties. The secretary of the fire department, or fire company must keep a record of all certificates of exemption or active membership, the date thereof, and to whom issued; and when no seal is provided, similar entries of certificates issued to obtain county clerk's certificates. Every such certificate is prima facie evidence of the facts therein stated.

History: En. Sec. 3235, Pol. C. 1895; re-en. Sec. 2079, Rev. C. 1907; re-en. Sec. 5146, R. C. M. 1921.

11-2007. (5147) **Duties of chief.** The chief of every fire department must inquire into the cause of every fire occurring in the town of which he is the chief, and keep a record thereof; he must aid in the enforcement of all fire ordinances duly enacted, examine buildings in process of erection, report violations of ordinances relating to prevention or extinguishment of fires, and, when directed by the proper authorities, institute prosecutions therefor, and perform such other duties as may be by proper authority imposed upon him. His compensation, if any, must be fixed and paid by the city or town authorities. He must attend all fires with his badge of office conspicuously displayed, must prevent injury to, take charge of, and preserve all property rescued from fires, and return the same to the owner thereof on the payment of the expenses incurred in saving and keeping the same, the amount thereof, when not agreed to, to be fixed by any justice of the peace.

He must devise and formulate or cause to be devised and formulated a course or plan of instruction or training program making available to each regular member of his department not less than thirty (30) hours of instruction per year in matters pertaining to fire fighting, and he must supervise the operation of such plan or program. On or before the first day of September of each year, he must prepare and file with the public employees' retirement system of the state of Montana a certificate, subscribed and verified under oath, stating whether or not his volunteer fire company qualified under the provisions of subparagraph two (2) A of section 11-2023 during the preceding fiscal year, and setting forth the full name and residence address of each member of his department who satisfactorily completed such thirty (30) hours of instruction during said preceding fiscal year, under the provisions of subparagraph two (2) C of section 11-2023. Such verified certificate must be maintained in a permanent file by said public employees' retirement system for the purpose of establishing eligibility for participation in the volunteer firemen's pension plan, and must be open for inspection as a public record.

History: En. Sec. 3236, Pol. C. 1895; re-en. Sec. 2080, Rev. C. 1907; re-en. Sec. 5147, R. C. M. 1921; amd. Sec. 6, Ch. 118, L. 1965.

Cross-References

Inspection of fire equipment of buildings, sec. 69-1808.

Investigation of fires, sec. 82-1209.

11-2008. (5148) **Fire protection—creation of fire districts—contracts with cities, towns and private service—dissolution and change of boundaries.** (a) The board of county commissioners is authorized to establish fire districts in any unincorporated territory, town or village upon presentation of a petition in writing signed by the owners of fifty per cent (50%) or more of the area of the privately owned lands included within the proposed district who constitute a majority of the taxpayers who are freeholders of such area, and whose names appear upon the last completed assessment roll; the board shall within ten (10) days after the receipt of such petition; give notice of the hearing thereof at least ten (10) days prior thereto by causing notices of the time and place of such hearing to be posted in at least three (3) of the most public places within the area proposed to be established as a fire district, and published at least once not less than ten (10) or more than twenty (20)

days prior to the time of said hearing in a newspaper regularly published in the county in which such proposed district is situated. The board shall proceed to hear the said petition at the time set therefor, or at any time within five (5) days thereafter to which the same shall have been postponed or continued with due notice, and may grant the same unless it shall be established thereat that the petition bears insufficient signatures as above required, or, if originally sufficient, that by reason of written withdrawals thereof it has become insufficient. The board shall render its decision within thirty (30) days after said hearing. At the time of the annual levy of taxes the board of county commissioners may levy a special tax upon all property within such districts for the purpose of buying or maintaining fire protection facilities and apparatus for such districts, or for the purpose of paying to a city, town or private fire service the consideration provided for in any contract with the council of such city, town or private fire service for the purpose of furnishing fire protection service to property within such district, and such tax must be collected as are other taxes. That the relationship between fire district and the city, town or private fire service shall be that of an independent contractor.

(b) Any fire district organized under this act may be dissolved by the board of county commissioners upon presentation of a petition therefor signed by the owners of fifty per cent (50%) or more of the area of the privately owned lands included within such fire district and who constitute a majority of the taxpayers who are freeholders of such area, and whose names appear upon the last completed assessment roll. The procedure and requirements outlined in subsection (a) above shall apply to such requests for dissolution of fire districts.

(c) Change of boundaries—division. Fire districts may be divided in the following manner: Whenever a petition in writing shall be made to the county commissioners, signed by the owners of twenty per cent (20%), or more, of the privately owned lands of an area proposed to be detracted from the original district, and who constitute twenty per cent (20%), or more, of the taxpayers who are freeholders within such proposed detracted area, whose names appear upon the last completed assessment roll, the county commissioners shall, within ten (10) days from the receipt of such petition give notice of the hearing of said petition by causing to be posted, a notice thereof at least ten (10) days prior to the time appointed by them for the consideration of said petition, in at least three (3) of the most public places within the proposed detracted area, and also in at least three (3) of the most public places within the remaining area. The petition for detraction shall describe the boundaries of the proposed detracted area, and also the boundaries of the remaining area. The county commissioners shall, on the day fixed for hearing such petition (or on any legally postponed day), proceed to hear said petition; and said petition shall be granted, and the original district shall thereupon be divided into separate districts, unless at the time of the hearing on such petition protests shall be presented by the owners of fifty per cent (50%), or more, of the area of the privately owned lands included within the entire original district, and who constitute a majority of the tax-

payers who are freeholders of the entire original district, and whose names appear upon the last completed assessment roll. If such required amount of protests are presented, the petition for division shall be disallowed. Upon the division of districts, moneys on hand shall be apportioned between the divided areas according to their respective taxable valuations; all other assets of the original district shall become the property of the remaining area, but a reasonable value shall be placed upon such "other assets" and the remaining area shall become indebted to the detracted area for its proportionate share thereof, based upon taxable valuations. Provided, however, that any detracted area shall remain liable for any existing warrant and bonded indebtedness of the original district.

(d) Change of boundaries—annexation. Adjacent territory that is not already a part of a fire district may be annexed in the following manner: A petition in writing by the owners of fifty per cent (50%), or more of the area of privately owned lands of the adjacent area proposed to be annexed, and who constitute a majority of the taxpaying freeholders within such proposed area to be annexed, whose names appear upon the last completed assessment roll, shall be presented to the board of county commissioners. The commissioners shall hold a hearing on such petition, in accordance with the procedure outlined in subsection (c) above: and shall allow the annexation of such proposed adjacent territory, unless protests are presented at the hearing by the owners of fifty per cent (50%), or more, of the area of the privately owned lands included within the original district, and who constitute a majority of the taxpaying freeholders within the original district. Such annexed territory shall become liable for any outstanding warrant and bonded indebtedness of the original district.

Adjacent territory that is already a part of a fire district may withdraw from such fire district and become annexed to another fire district in the following manner: A petition in writing by the owners of fifty per cent (50%), or more, of the privately owned lands of an area which is part of any organized fire district, and who constitute a majority of the taxpaying freeholders within such area, according to the last completed assessment roll, shall be presented to the county commissioners asking that such area be transferred to, and included in, any other organized fire district to which said area is adjacent. Said petition must set forth the change of boundaries to be affected by such proposed transfer of area. The commissioners shall hold a hearing on the petition in accordance with the procedure outlined in subsection (c), above; and the withdrawal and annexation shall be allowed unless protests are presented at the hearing by the owners of fifty per cent (50%), or more, of the area of the privately owned lands included within either district affected, and who constitute a majority of the taxpaying freeholders of either district, according to the last completed assessment roll, and provided, that such withdrawals and annexation shall be allowed only upon a showing of more advantageous proximity and communications with the fire-fighting facilities of the other district.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R. C. M. 1921; amd.

Sec. 1, Ch. 15, L. 1931; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963.

Constitutionality

The provisions of this section, as amended in 1953, for levy of a special assessment upon property within districts without notice to property owners were unconstitutional as being in direct conflict with the due process of law clause in section 27, article III, Montana constitution and the first clause of the fourteenth amendment to the constitution of the United States of America. Great Northern Ry. Co. v. Roosevelt County, 134 M 355, 332 P 2d 501, 502, 505, 506, distinguished 138 M 69, 73, 354 P 2d 1056, 1058.

References

State ex rel. Peninsula Security Co. v. Board of County Commrs., 62 M 69, 70, 202 P 1108; Harrison v. City of Missoula, 146 M 420, 407 P 2d 703.

Collateral References

Municipal Corporations⇦3, 27, 28, 51.
62 C.J.S. Municipal Corporations §§ 7 et seq., 41, 101.

11-2009. (5148.1) Unconstitutional.

Unconstitutional

This section (Sec. 1, Ch. 148, L. 1925), authorizing establishment of fire limits within unincorporated towns, was held unconstitutional in Great Northern Ry. Co. v. Roosevelt County, 134 M 355, 332 P 2d 501.

This section (Sec. 1, Ch. 148, L. 1925) was a denial of due process in conflict with section 27, article III, Montana constitution and the first clause of the fourteenth amendment to the constitution of the United States of America. Great Northern Ry. Co. v. Roosevelt County, 134 M 355, 332 P 2d 501, 502, 505, 506, distinguished in 138 M 69, 73, 354 P 2d 1056, 1058.

11-2010. (5149) Trustees of fire districts—mutual aid agreements.

(a) Whenever the board of county commissioners shall have established a fire district in any unincorporated territory, town or village, said commissioners may contract with a city, town or private fire company to furnish fire protection for property within said district, or shall appoint five qualified trustees to govern and manage the affairs of the fire district, who shall hold office until their successors are elected and qualified, as hereinafter provided. Qualifications of electors and trustees, terms of office, vacancies, manner and date of elections, shall, as far as possible, be the same as provided in the school election laws for school districts of the second class; except, that only electors who are taxpayers affected by the special fire district levies may vote at such elections, and be qualified to serve as trustees; and except, also, there need be no special registration of electors.

(b) Power of trustee. The trustees shall organize by choosing a chairman, and appointing one member to act as secretary. They shall prepare and adopt suitable bylaws; appoint and form fire companies that shall have the same duties, exemptions, and privileges as other fire companies. The trustees shall have the authority to provide adequate and standard fire-fighting apparatus, equipment, housing and facilities for the protection of the district; and shall prepare annual budgets and request special levies therefor. The budget laws relating to county budgets, shall, as far as applicable, apply to fire districts.

(c) The trustees of such fire district may contract with the council of any city or town, or with the trustees of any other fire district established in any unincorporated territory, town or village, lying within five (5) miles of the farthest limits of the district, whether such city or town or other fire district shall lie within the same county or another county,

for the extension of fire protection service by such city or town, or by such other fire district, to property included within the district, and may agree to pay a reasonable consideration therefor, provided, that the owners of ten per cent (10%) of the taxable value of the property in any fire district may elect to make a contract with the city fire department for fire protection, or to be included in the fire district protection facilities. Likewise, the trustees may contract to permit the fire district equipment and facilities to be used by or for such cities or towns lying within the district, or by such cities, towns, or other fire districts lying within five (5) miles of the farthest limits of the district.

(d) A mutual aid agreement is an agreement for protection against natural or man-made disasters. Fire district trustees may enter such agreements with the proper authority of

(1) other fire districts

(2) unincorporated municipalities

(3) incorporated municipalities

(4) state agencies which have fire prevention services

(5) private fire prevention agencies

(6) federal agencies.

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1925; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965.

References

State ex rel. Powers v. Dale, 47 M 227, 229, 131 P 670.

Collateral References

Municipal Corporations⇐167-169.
62 C.J.S. Municipal Corporations § 542.

11-2011 to 11-2019. (5150 to 5158) **Repealed—Chapter 75, Laws of 1953.**

Repeal

These sections (Secs. 2 to 10, Ch. 107, L. 1911; Sec. 1, Ch. 130, L. 1925), relating to a bond election and the proceeds thereof for a fire district, were repealed by Sec. 3 Ch. 75, Laws 1953.

11-2020. (5158.1) **Volunteer Firemen's Compensation Act.** This act shall be known and may be cited as the Volunteer Firemen's Compensation Act.

History: En. Sec. 1, Ch. 65, L. 1935.

Collateral References

Municipal Corporations⇐176 (3).
62 C.J.S. Municipal Corporations §§ 563, 591.

Right of firemen to recover under workmen's compensation acts. 10 ALR 201 and 81 ALR 478.

11-2021. (5158.2) **Repealed—Chapter 147, Laws of 1963.**

Repeal

This section (Sec. 2, Ch. 65, L. 1935), creating the volunteer firemen's compensation fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

11-2022. (5158.3) **Disability, death, insurance and pension benefits.** 1. Every member of a fire company organized in an unincorporated area, town or village under the laws of this state, shall be entitled to receive compensation for disability incurred while in the performance of his duties

as such fireman, when such disability necessitates the services of a physician or surgeon, while confined or nonconfined, in the following amounts:

a. If confined to a hospital, the actual cost of hospitalization, and the reasonable charges of a duly licensed physician or surgeon, not to exceed two thousand five hundred dollars ($2,500).

b. If not confined to a hospital, the actual reasonable charges of a duly licensed physician or surgeon, not to exceed seven hundred fifty dollars ($750).

c. If confined to his home, and such confinement necessitates the services of a nurse, then the actual charges of such nurse, together with actual reasonable charges of a duly licensed physician or surgeon, not to exceed one thousand seven hundred fifty dollars ($1,750).

2. Where an injury incurred in line of such duty results in the loss by amputation of an arm, hand, leg or foot, or the enucleation of an eye, or the loss of any of the natural teeth, the board shall order them an artificial member or members be furnished to supply the loss thereof. The expense of furnishing such members shall not exceed the following amounts: Hand or arm to elbow, two hundred fifty dollars ($250); arm above elbow, three hundred dollars ($300); foot or leg, two hundred fifty dollars ($250); eye, twenty-five dollars ($25); teeth, one hundred seventy-five dollars ($175). The replacement of an artificial member so furnished shall be required every five (5) years, if necessary.

3. To aid in defraying funeral expenses of a fireman covered under this act whose death occurs in line of duty, an amount not to exceed the sum of two hundred fifty dollars ($250) shall be allowed.

4. To encourage and aid volunteer fire departments to maintain group insurance for benefits on account of death or injury incurred by members while in the performance of duties as volunteer firemen, the sum of fifty dollars ($50) per year for each mobile unit of fire-fighting equipment, not exceeding two (2) such units in number for any such department, shall be paid to each volunteer fire department maintaining such insurance, or to the organization or agency maintaining such insurance for any such volunteer fire department.

5. Every volunteer fireman who shall meet the qualification requirements set forth in subparagraph two (2) of section 11-2023, and who shall complete and file the claim provided for under subparagraph two (2) of section 11-2024, shall be entitled thereafter to participate in the volunteer firemen's pension plan throughout the remainder of his lifetime and to receive payments thereunder computed each year in the following manner. Whenever at the close of business on the last day of any fiscal year there shall be a balance in the volunteer fireman's compensation earmarked revenue account in the earmarked revenue fund in excess of one million dollars ($1,000,000) then the industrial accident board shall pay over said excess amount to the public employees' retirement system, for the payment by said public employees' retirement system of pensions to qualified volunteer firemen during the immediately succeeding fiscal year. The amount to be paid to each qualifying volunteer fireman shall be determined by dividing said excess amount by the

number of volunteer firemen qualifying to participate in such pension plan at the beginning of such succeeding fiscal year. If such excess amount shall be sufficient to pay each such qualified volunteer fireman at least twenty dollars ($20) per month throughout such succeeding fiscal year, then such pension shall be paid monthly, on or before the last day of each month of such succeeding fiscal year; but if said excess amount shall not be sufficient to pay each qualified volunteer fireman at least twenty dollars ($20) per month, then each qualified volunteer fireman's full pension for that year shall be paid to him in one lump payment on or before the fifteenth day of December of such year; provided, however, that in any event the total pension payable hereunder to any qualified volunteer fireman shall not exceed the sum of twenty-five dollars ($25) per month, and the amount to be set aside hereunder from the volunteer fireman's compensation earmarked revenue account in the earmarked revenue fund at the beginning of any fiscal year for the funding of such pensions shall not in any event exceed the amount necessary to pay such maximum of twenty-five dollars ($25) per month to each volunteer fireman qualified as of the beginning of such fiscal year. The fiscal year for the purpose of this act shall begin on the first day of July of each year, and end on the last day of June of each year.

History: En. Sec. 3, Ch. 65, L. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967.

Collateral References

Municipal Corporations⊂=200.
62 C.J.S. Municipal Corporations § 614.

11-2023. (5158.4) **Qualification for compensation.** (1) In order to qualify for the compensation provided under subparagraphs one (1), two (2), three (3) and four (4) of section 11-2022, the fireman must be an enrolled active member of a fire company organized under the laws of the state of Montana in an unincorporated town or village, at the time of such injury or sickness for which compensation hereunder is claimed.

(2) In order to qualify for participation in the volunteer firemen's pension plan under subparagraph five (5) of section 11-2022, a volunteer fireman must meet each of the following requirements:

(A) He must have completed a total of twenty (20) years' service as an active volunteer fireman and as an active member of a qualified volunteer fire company organized under the laws of the state of Montana in an unincorporated area, town or village; provided, that from and after July 1, 1965, no volunteer fireman shall receive credit for any year of membership in any such volunteer fire company unless throughout such year such volunteer fire company shall have maintained fire-fighting equipment in serviceable condition of a value of seven hundred fifty dollars ($750) or more, and unless throughout such year such volunteer fire company, or the fire district served thereby, shall have been rated in class five (5), six (6), seven (7), eight (8) or nine (9) by the board of fire underwriters for the purpose of fire insurance premium rates; provided, further, that such twenty (20) years of active service shall be cumulative and need not be continuous, and that such service need not be acquired with one (1) single fire company, but may be a total of separate periods of active service with different fire companies organized under the

laws of the state of Montana in different fire districts in unincorporated areas, towns or villages. From and after passage of this act, the annual period of service for the purpose of this act shall be the fiscal year; no fractional part of any year shall count toward the twenty-year service requirement, and to receive credit for any particular year a volunteer fireman must serve with one (1) particular volunteer fire company throughout that entire fiscal year;

(B) He must have attained the age of fifty-five (55) years (but he need not be an active volunteer fireman or an active member of any volunteer fire company at the time of reaching such age); and

(C) During each of the twenty (20) years for which he claims credit under subparagraph (A) above, he must have completed a minimum of thirty (30) hours of instruction in matters pertaining to fire fighting, under a program formulated and supervised by the chief of his volunteer fire company. Provided, however, that any volunteer fireman who is an active member of a volunteer fire company organized under the laws of the state of Montana in an unincorporated area, town or village at the time of passage of this act shall receive credit against the said twenty (20) year service requirement to the extent of one (1) year's credit for each two (2) years' service completed or to be completed by him prior to July 1, 1965, as such active member of any such volunteer fire company or companies; for the purpose of this credit for prior service it shall not be necessary either that the volunteer fire company or companies with which such service has been rendered shall satisfy the requirements of subparagraph (A) above, or that the individual volunteer fireman shall during such prior service have satisfied the requirements of subparagraph (C) above; but in any event no more than ten (10) years' credit shall be allowed any such volunteer fireman by reason of such service prior to July 1, 1965. For the purpose of establishing such prior service credit, the chief of each volunteer fire company shall on or before September 1, 1968, prepare and file with the public employees' retirement system of the state of Montana a certificate, subscribed and verified under oath, setting forth the names and residence addresses of each of the members of his volunteer fire company who shall have qualified for one (1) or more years' credit for prior service, and setting forth the number of years of credit to which each thereof shall be entitled.

History: En. Sec. 4, Ch. 65, L. 1935; amd. Sec. 2, Ch. 118, L. 1965; amd. Sec. 1, Ch. 161, L. 1967.

11-2024. (5158.5) **Claim for compensation—contents—filing—limitation on time for filing—addition of name to pension list.** (1) A fireman claiming compensation under subparagraphs one (1), two (2), three (3) or four (4), of section 11-2022, must file his claim with the industrial accident board upon a form to be provided therefor, which claim shall contain the name and address of the claimant, date, place and manner of incurring of disability, name and address of attending physician or surgeon and/or nurse, if any, dates of confinement, if confined, or if not confined, dates of attendance by physician or surgeon, dates of attendance by nurse; affidavit of attending physician or surgeon as to nature of disa-

bility, number and dates of attendance and statement of charges; if confined to hospital, an affidavit of person in charge stating nature of disability, dates of confinement and expenses incurred while so confined; affidavit of chief or secretary of fire company stating that said fire company was duly organized under the laws of Montana in an unincorporated town or village, statement that claimant was, at the date of disability an active enrolled member of such company, and that the disability was incurred in line of duty; an affidavit of the nurse stating the nature of disability, dates of attendance, and statement of charges for services; said claim shall be verified by the claimant, the attending physician or surgeon and nurse, if any, and by the person in charge of the hospital, if confined; said claim shall be filed with the board within (1) year from the date of disability.

(2) A volunteer fireman claiming eligibility under the volunteer firemen's pension plan must file his claim with the public employees' retirement system upon a form to be provided therefor by the public employees' retirement system, which claim shall contain the name, address and date of birth of the claimant; the fiscal year for which his eligibility shall commence; the years during which his service as a volunteer fireman was rendered and the name or names of the volunteer fire company or companies with which such service was rendered. Such claim shall be filed on or before the first day of May of any year. The public employees' retirement system may require such proof of age and service as it may deem proper, but the certificates filed or to be filed under section 11-2007 and subparagraph 2 of section 11-2023 shall be accepted by the public employees' retirement system as prima facie proof of such service. If such claim be properly filed and such claimant be found by the public employees' retirement system properly qualified to participate in such volunteer firemen's pension plan, then the name of the claimant shall be added to the list of qualified volunteer firemen, and the claimant shall then be entitled to participate in said volunteer firemen's pension plan as of the fiscal year beginning the first day of July following the filing of such claim.

History: En. Sec. 5, Ch. 65, L. 1935; amd. Sec. 3, Ch. 118, L. 1965; amd. Sec. 4, Ch. 160, L. 1967.

Collateral References

Workmen's Compensation⇐1257.

100 C.J.S. Workmen's Compensation § 458.

11-2025. (5158.6) **Payment of claim—beneficiaries of decedent.** (1) Upon receipt of a claim under subparagraphs one (1), two (2), three (3) and four (4), or any thereof, of section 11-2022, by the industrial accident board, if the same is found to be incompliance with the provisions of subsection one (1) of section 11-2024, the board must order the allowance thereof, and pay the same by warrants drawn upon the volunteer firemen's fund to the order of the attending physician or surgeon, attending nurse, and hospital.

(2) All payments under the volunteer firemen's pension plan shall be approved by the public employees' retirement system and paid by warrants drawn upon the earmarked revenue fund, payable to the order of the individual qualified volunteer fireman; provided, however, that in

the event of the death of any such qualified volunteer fireman after the beginning of any fiscal year but before he has received his full pension for that year, and if such deceased volunteer fireman shall have left a widow, or a child or children under the age of eighteen, or both, then any unpaid part of his said pension for said fiscal year shall be paid by a warrant or warrants drawn upon the earmarked revenue fund and payable to the order of said widow, if any, or if none, then to the guardian or other person having custody of the said child or children under the age of eighteen years. If such deceased volunteer fireman shall leave neither widow nor child under the age of eighteen years, then his pension shall terminate at the end of the month prior to the month in which his death occurs; and in any event such pension shall terminate no later than the end of the fiscal year in which death occurs.

History: En. Sec. 6, Ch. 65, L. 1935; amd. Sec. 192, Ch. 147, L. 1963; amd. Sec. 4, Ch. 118, L. 1965.

11-2026. (5158.7) **Administration of act.** (1) Except as provided hereinafter, the industrial accident board of the state of Montana shall administer the Volunteer Firemen's Compensation Act, and all payments made under subparagraph (1) of section 11-2025, R. C. M. 1947, shall be made by warrants drawn by the board.

(2) The board of administration of the public employees' retirement system of the state of Montana shall administer the volunteer firemen's pension plan, and all payments made under subparagraph (2) of section 11-2025 shall be made by warrants drawn by the public employees' retirement system. Annually, on or before fifteen (15) days after the close of each fiscal year, the industrial accident board shall notify the secretary or board of administration of the public employees' retirement system in writing of the balance remaining in the volunteer firemen's compensation fund as of the end of said fiscal year.

History: En. Sec. 7, Ch. 65, L. 1935; amd. Sec. 193, Ch. 147, L. 1963; amd. Sec. 1, Ch. 160, L. 1967.

11-2027. (5158.8) **Rules and regulations to be made by industrial accident board and board of administration of public employees' retirement system.** The industrial accident board shall make such rules and regulations as it deems necessary and advisable in its administration of the Volunteer Firemen's Compensation Act, not inconsistent with the provisions hereof. The board of administration of the public employees' retirement system shall make such rules and regulations as it deems necessary and advisable in its administration of the volunteer firemen's pension plan, not inconsistent with the provisions hereof. Necessary expenses of the industrial accident board for office supplies, stationery and forms in connection with its administration of the Volunteer Firemen's Compensation Act shall be a charge against the fund. Necessary expenses of the public employees' retirement system for office supplies, stationery and forms in connection with its administration of the volunteer firemen's pension plan shall be a charge against the fund, and shall be drawn from said

fund by the public employees' retirement system through warrants to be executed by the industrial accident board upon request of the public employees' retirement system, at such intervals as the board of administration of the public employees' retirement system shall deem proper.

History: En. Sec. 8, Ch. 65, L. 1935; amd. Sec. 2, Ch. 160, L. 1967.

Collateral References

Workmen's Compensation⇨1091-1094.
100 C.J.S. Workmen's Compensation § 385.

11-2028. (5158.9) **Earnings to be part of moneys.** All earnings made by moneys earmarked by section 11-2030 by reason of interest paid for the deposit thereof, or otherwise, shall be credited to and become a part of such moneys.

History: En. Sec. 9, Ch. 65, L. 1935; amd. Sec. 194, Ch. 147, L. 1963.

11-2029. (5158.10) **Reports of industrial accident board and public employees' retirement system.** (1) The industrial accident board shall, at the time specified in section 92-842 for making report therein provided, make a report to the governor covering the operations and proceedings for the preceding fiscal year relative to its administration under the Volunteer Firemen's Compensation Act, with such suggestions or recommendations as it may deem of value for public information.

(2) The public employees' retirement system shall, not later than the first day of November of each year, make a report to the governor covering the operations and proceedings for the prior fiscal year relative to its administration under the volunteer firemen's pension plan, with such suggestions or recommendations as it may deem of value for public information.

(3) Copies of all such reports shall be made available by the industrial accident board or the public employees' retirement system to the chief or other representative of any volunteer fire company or companies within the state of Montana which shall at any time request the same.

History: En. Sec. 10, Ch. 65, L. 1935; amd. Sec. 5, Ch. 118, L. 1965; amd. Sec. 1, Ch. 159, L. 1967.

11-2030. (5158.11) **Fire insurance premium tax to be paid into fund.** The state auditor and ex officio commissioner of insurance of the state of Montana shall annually deposit in the earmarked revenue fund, such sum as shall be equivalent to five per cent (5%) of premium taxes collected from insurers authorized to effect insurance against risks enumerated in subsection 2 of section 11-1919, as shall remain after the amounts provided for by section 11-1919 shall have been first deducted. Such moneys shall be used for the payment of claims and administrative costs as provided in section 11-2025 and 11-2026.

History: En. Sec. 11, Ch. 65, L. 1935; amd. Sec. 1, Ch. 125, L. 1947; amd. Sec. 1, Ch. 164, L. 1959; amd. Sec. 191, Ch. 147, L. 1963.

Collateral References

Insurance⇨7.
44 C.J.S. Insurance § 71.

11-2031. (5158.12) **Penalty for false statements or claims.** Any person required to make a statement or affidavit hereunder, who shall will-

fully falsify such statement or affidavit, and any person who shall file a false claim hereunder, shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine of not exceeding five hundred ($500.00) dollars, or to undergo imprisonment not exceeding six months, or both such fine and imprisonment.

History: En. Sec. 12, Ch. 65, L. 1935.

CHAPTER 21

MUNICIPAL REGULATION OF PLUMBING—PLUMBING LICENSE

(Repealed—Section 12, Chapter 203, Laws of 1949)

11-2101 to 11-2111. (5183 to 5193) **Repealed.**

Repeal

These sections (Secs. 1 to 11, Ch. 29, L. 1913), providing for regulation and licensing of plumbers by a municipally appointed board of plumbing examiners, were repealed as Secs. 5183 to 5193, Revised Codes 1935 by Sec. 12, Ch. 203, Laws 1949.

The new law (Ch. 203, L. 1949) provides for regulation and licensing by a state board and is compiled as secs. 66-2401 to 66-2411.

CHAPTER 22

SPECIAL IMPROVEMENT DISTRICTS

Section 11-2201. Special improvements—powers of city council.
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11-2201. (5225) **Special improvements—powers of city council.** All streets, alleys, places, or courts in the municipalities of this state, now open or dedicated, or which may hereafter be opened or dedicated to public use, shall be deemed and held to be open public streets, alleys, places, or courts, for the purposes of this chapter, and the city council of each municipality is hereby empowered to establish and change the grades of said streets, alleys, places, or courts, and fix the width thereof, and is hereby invested with jurisdiction to acquire private property for right of way, and to order to be done any of the work mentioned in this chapter under the proceedings hereinafter described.

Further, that in addition to the powers heretofore granted, when the public interest or convenience requires, the governing body of a municipality may:

(1) Establish pedestrian malls.

(2) Prohibit, in whole or in part, vehicular traffic on a pedestrian mall.

(3) Pay, from general funds of the municipality or other available moneys or from the proceeds of assessments levied on lands benefited by the establishment of a pedestrian mall, the damages, if any, allowed or awarded to any property owner by reason of the establishment of a pedestrian mall, provided that the resolution of intention contains a statement that an assessment will be levied to pay the whole or a stated portion of such damages, if any, allowed or awarded to any property owner by reason of the establishment of such pedestrian mall.

(4) Construct on public streets which have been or will be established as a pedestrian mall improvements of any kind or nature necessary or convenient to the operation of such streets as a pedestrian mall, including but not limited to paving, sidewalks, curbs, sewers, covered walkways or areas, air conditioning, drainage works, street lighting facilities, fire protection facilities, flood protection facilities, water distribution facilities, vehicular parking areas, retaining walls, landscaping, tree planting, statuary, fountains, decorative structures, benches, rest rooms, child care facilities, display facilities, information booths, public assembly facilities, and other structures, works or improvements necessary or convenient to serve members of the public using such pedestrian mall including the reconstruction or relocation of existing municipally owned works, improvements or facilities on such streets. Such improvements or structures may be attached to abutting private buildings or structures, provided that such improvements or structures shall be located on public property.

(a) It is further provided that in addition to the purposes for which an improvement district may be formed, as heretofore set forth, an im-

provement district may be formed for the sole purpose of the operation, maintenance, repair and improvements of pedestrian malls, off-street parking facilities, and parkings and parkways.

(b) Subject to the powers granted and the limitations contained in this section, the powers and duties of the municipality and the procedure to be followed shall be as provided in this article for other types of special improvement districts.

(c) If a petition for the formation of an improvement district under the provisions of this section is presented to the governing body purporting to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lien holders, the governing body, after verifying such ownership and making a finding of such fact, shall adopt a resolution of intention to order the improvement pursuant to the provisions of section 11-2204, and shall have immediate jurisdiction to adopt the resolution ordering the improvement pursuant to the following provisions, without the necessity of the publication and posting of the resolution of intention provided for in 11-2204.

(d) The governing body shall make annual statements and estimates of the expenses of the district, which shall be provided for by the levy and collection of ad valorem taxes upon the assessed value of all the real and personal property in the district, shall publish notice thereof, shall have hearings thereon and adopt them at the times and in the manners provided for incorporated cities and towns by the applicable portions of sections 11-2204 and 11-2206. The governing body, on or before the second Monday in August of each year, shall fix, levy and assess the amount to be raised by ad valorem taxes upon all of the property of the district. All statutes providing for the levy and collection of state and county taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes shall be applicable to the district taxes provided for under this section.

(e) An improvement district formed for the purposes of establishing a pedestrian mall or off-street parking may be financed in accordance with the provisions of section 11-2214, R. C. M. 1947, and/or in accordance with the methods of financing set forth for the construction of water or sewer systems as set forth in section 11-2218, R. C. M. 1947.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R. C. M. 1921; amd. Sec. 1, Ch. 136, L. 1967.

NOTE.—For history of early improvement district acts, see Stadler v. City of Helena, 46 M 128, 127 P 454. Sections 3367 to 3412, Revised Codes 1907 (except sections 3368 and 3390 to 3395), were repealed by chapter 89, Laws of 1913, which is here given as amended.

Street Improvements

Sections 11-2201 to 11-2281 provide the method for carrying out the powers granted in section 11-906. Dietrich v. City of Deer Lodge, 124 M 8, 218 P 2d 708.

A city may create a special improvement district for street improvements where the street is also a part of a state highway and, in such instance, the contracts for the work must be awarded by the state highway commission. Wood v. City of Kalispell, 131 M 390, 310 P 2d 1058, 1062.

References

Hinzeman v. City of Deer Lodge, 58 M 369, 375, 193 P 395; Aiken v. City of Glendive, 60 M 1, 2, 197 P 1003; Evans v. City of Helena, 60 M 577, 588, 199 P 445; Murray v. City of Helena, 65 M 485, 211 P 197; Rush v. Grandy, 66 M 222, 226, 213 P 242; Thomas v. City of Missoula, 70 M 478, 483, 226 P 213; Stanley v. Jeffries, 86 M 114, 130, 284 P 134.

Collateral References

Municipal Corporations⇐269 (3).

63 C.J.S. Municipal Corporations § 1046.

38 Am. Jur. 246, Municipal Corporations, § 559 et seq.

Leasehold estate in exempt property as subject of tax or special assessment. 23 ALR 248.

Public school property as subject to assessment for local improvements. 36 ALR 1540.

Necessity that additional assessment in proceeding for local improvement precede incurring liability in excess of the original assessment. 63 ALR 1179.

Lump-sum assessment for taxes or public improvement against property owned by cotenants in undivided shares. 80 ALR 862.

Public property as subject to special assessment for improvement. 90 ALR 1137.

Manner of enforcing special assessments against public property. 95 ALR 689 and 150 ALR 1394.

Power and duty to include in a periodical special assessment the amount of a deficiency for a previous period resulting from delinquent assessments which may eventually be paid. 96 ALR 1275.

Assessment or taxation of property for use, as distinguished from construction, maintenance, repair, or operation, of public improvement. 127 ALR 1374.

Construction or improvement of sewers as a local or district improvement within provisions authorizing or requiring special assessments or other specified means of defraying expense. 134 ALR 895.

Limitation of action on or to compel taxation for improvement bonds. 38 ALR 2d 930.

11-2202. (5226) **Special improvement districts — placing wires underground—cost per lineal foot.** (1) Whenever the public interest or convenience may require, the city council is hereby authorized and empowered to create special improvement districts, for building, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water, and for building and constructing municipal swimming pools and other recreation facilities, and order the whole, or any portion or portions, either in length or width, of any one or more of the streets, avenues, alleys, or places or public ways of any such city, graded or regraded to the official grade, planked or replanked, paved or repaved, macadamized or remacadamized, graveled or regraveled, piled or repiled, capped or recapped, surfaced or resurfaced, oiled or reoiled, and to order the construction or reconstruction therein of sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings, including the planting of grassplots and setting out of trees; sewers, ditches, drains, conduits, and channels for sanitary and drainage purposes, or either or both thereof, with outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels, and other appurtenances; waterworks, water mains, and extensions of water mains; pipes, hydrants, hose connections for irrigating purposes; appliances for fire protection, tunnels, viaducts, conduits, subways, breakwaters, levees, retaining walls, bulkheads, and walls of rock or other material to protect the same from overflow or injury by water; the opening of streets, avenues, and alleys; the planting of trees thereon; and to maintain, preserve and care for any and all of the improvements herein mentioned; and the construction or reconstruction in, over, or through property or rights of way owned by such city, of tunnels, sewers, ditches, drains, conduits, and channels for sanitary and drainage purposes, or either or both thereof, with necessary outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connection sewers, ditches, drains, conduits, channels, and other appurtenances; pipes, hose connections for irrigating, hydrants and appliances for fire protection; and breakwaters, levees, retaining walls and bulkheads; walls of rock or other material to

protect the streets, avenues, lanes, alleys, courts, places, public ways, and other property in any such city from overflow by water; and to order any work to be done which shall be deemed necessary to improve the whole or any portion of such streets, avenues, sidewalks, alleys, or places or public ways, or property, or right of way of such city. The city council is also hereby authorized to create a district as hereinafter specified, for the purpose of defraying the cost of acquiring private property for the purpose of opening, widening, or extending any street, avenue, or alley within the corporate limits of such city.

(2) It is further provided that the council shall have the same jurisdiction and powers as in this section above provided, to (before doing any of the work mentioned in this act) require any public service corporation, or company, firm, or person occupying such streets, avenues, or alleys, at their own expense and within a reasonable time to be fixed by the council, place in an underground conduit in such manner as may be directed by the city council, all wires, electric conduits, telephone, telegraph, power, or power transmission lines, or appurtenances thereto, or appliances owned, held, or enjoyed in connection therewith; provided, however, that the whole cost so assessed shall at no time exceed the sum of one dollar and fifty cents per lineal foot, plus the cost of the pipe so laid of the entire length of the water mains laid in such district.

History: En. Sec. 2, Ch. 89, L. 1913; amd. Sec. 1, Ch. 142, L. 1915; amd. Sec. 1, Ch. 175, L. 1919; re-en. Sec. 5226, R. C. M. 1921; amd. Sec. 1, Ch. 32, L. 1961; amd. Sec. 1, Ch. 206, L. 1965.

Limitation of Cost

The limitation of $1.50 per lineal foot placed upon municipal improvements by this section has no application to street grading, draining, paving or curbing and gutter work. Reeve v. City of Billings, 57 M 552, 189 P 768.

Paying for Condemned Property outside City Limits

In the absence of such a provision as contained in this section, the power of a municipality to create a special improvement district in a city for the construction of a project to protect city property from overflows would be implied on grounds of special necessity, and in such case, as well as where the power is expressly conferred, property in the special improvement district may properly be assessed for the purpose of paying for condemned property lying outside the city limits. Hansen v. City of Havre, 112 M 207, 215, 114 P 2d 1053.

Powers of City Council Limited

The statutes of this state relating to the creation of special improvement districts not only qualify and limit the powers which the city council may exercise, but they define with particularity the mode in which the restricted authority may be used, and compliance with their provisions is the sine qua non to the creation of a special improvement district for making improvements the expense of which is to be a charge against the property included. Shapard v. City of Missoula, 49 M 269, 279, 141 P 544; Cooper v. City of Bozeman, 54 M 277, 283, 169 P 801; Johnston v. City of Hardin, 55 M 574, 581, 179 P 824.

Right To Attack Validity of Creation of District

Where an owner joined in a petition for the creation of a special improvement district, and thereafter, in creating it, a large part of the property described therein was excluded by the city council, the petitioner was not estopped to subsequently attack the validity of the creation by the fact that he joined in the petition. City of Lewistown v. Warren, 52 M 356, 357, 157 P 954.

References

Hawley v. City of Butte, 53 M 411, 412, 164 P 305; Chicago, Milwaukee & St. Paul Ry. Co. v. Poland, 54 M 497, 501, 172 P 541; Eby v. City of Lewistown, 55 M 113, 117, 173 P 1163; Aiken v. City of Glendive, 60 M 1, 2, 6, 197 P 1003; Evans v. City of Helena, 60 M 577, 588, 199 P 445; Rush v. Grandy, 66 M 222, 226, 213 P 242; Ricker v. City of Helena, 68 M 350, 358, 218 P 1049; Thomas v. City of Missoula, 70 M 478, 483, 226 P 213; Stanley v. Jeffries, 86 M 114, 130, 284 P 134; Wood v. City of Kalispell, 131 M 390, 310 P 2d 1058, 1061; Lumbermen's Trust

Co. v. Town of Ryegate, 50 F 2d 219, 61 F 2d 14.

Collateral References

Municipal Corporations⇐269 (1-4), 450 (1).

63 C.J.S. Municipal Corporations §§ 1042-1047, 1359 et seq.

38 Am. Jur. 246, Municipal Corporations, § 559 et seq.

Power to impose cost of maintenance for operation of street lighting system on local improvement district. 60 ALR 272.

Underground conduits for electric wires as local improvements supporting special assessments. 66 ALR 1389.

Constitutionality of classification of streets as regards source of payment for improvements. 127 ALR 1090.

Construction or improvement of sewers as a local or district improvement within provisions authorizing or requiring special assessments or other specified means of defraying expense. 134 ALR 895.

DECISIONS UNDER FORMER LAW

Constitutionality

Laws providing for the creation of special improvement districts, and imposing a tax by way of assessment upon the property legislatively determined to be benefited, are not open to the objection that they deprive the owner of his property without due process of law. McMillan v. City of Butte, 30 M 220, 225, 76 P 203.

In the absence of proof that the burden imposed on a property owner by a municipal assessment is altogether out of proportion to the benefit actually accruing to the property, he cannot assert that his property is thereby taken without compensation. McMillan v. City of Butte, 30 M 220, 225, 76 P 203.

Assessments for special municipal improvements, such as the construction of sewers or the building of sidewalks, are not taxes, and constitutional and statutory provisions exempting property from taxation have no application to such assessments. City of Kalispell v. School District No. 5, 45 M 221, 226, 122 P 742.

Bond Issues—Payment

Where a special improvement district was established under this section and bonds were issued "payable from the collection of the special tax or assessment which is a lien against the real estate within said improvement district," the bonds were not a general obligation of the town and the town could not be compelled to redeem the bonds from a water fund made up of water rentals from water users, even though the town may have had authority to make payments from such fund. State ex rel. Truax v. Town of Lima, 121 M 152, 193 P 2d 1008, 1010.

Federal Property

Where property belonging to the federal government abuts on a street for the purpose of paving which a special improvement district is created, the city may devote its street fund or any money in its treasury not otherwise appropriated to the payment of that portion of the improvement which, but for its exemption from such imposition, would be properly assessable against such property. Ford v. City of Great Falls, 46 M 292, 308, 127 P 1004.

The constitutional provision that a state shall not impose any taxes upon property therein belonging to the United States includes special assessments for street improvements. Ford v. City of Great Falls, 46 M 292, 308, 127 P 1004.

Where streets are to be improved, the fact that property, exempt from special assessment, such as that of the federal government and its instrumentalities, lies on one side of one of the streets is no obstacle to the city's proceeding with the improvement of that street. Ford v. City of Great Falls, 46 M 292, 308, 127 P 1004.

Legislative Declaration

A law providing for the creation of special improvement districts is a legislative declaration that all the property in the proposed district is benefited by the improvement, and to the same extent. McMillan v. City of Butte, 30 M 220, 224, 76 P 203.

School District Property

The property of a school district, devoted exclusively to public school purposes, is, in the absence of express constitutional or statutory exemption, liable for the payment of assessments made for special municipal improvements. City of Kalispell v. School District No. 5, 45 M 221, 230, 122 P 742.

Theory of Act

The whole theory of local taxation or assessments is that the improvements for which they are levied afford a remuneration in the way of benefits. Power v. City of Helena, 43 M 336, 341, 116 P 415.

With respect to special improvements, the "superficial area" rule is the rule of this state; it amounts to a legislative declaration that all property in a proposed district is, presumptively, equally benefited by the improvement contemplated. Mansur v. City of Polson, 45 M 585, 595, 125 P 1002.

11-2203. (5226.1) **Connections with water and gas pipes.** The city or town council shall have power to require connections from gas pipes, water pipes, steam heating pipes, and sewers to the curb line of the adjacent property to be made before the permanent improvement of the streets whereon they are located, and to regulate the making of such connection on the streets already improved, or on unimproved streets; and in case the owners of the property on such streets shall fail to make such connections within the time fixed by the council, they may cause such connections to be made, and shall assess against the property in front of which said connections are made the entire cost and expense thereof. All assessments levied under the provisions of this section shall be enforced and collected in the same manner as other special assessments provided for in article V of this chapter, and amendments thereof, and all such assessments shall be a lien against the property.

History: En. Sec. 2, p. 213, L. 1897; re-en. Sec. 3368, Rev. C. 1907; re-en. Sec. 5226a, R. C. M. 1921.

NOTE.—From the context the above reference to "article V of this chapter" would seem to allude to article 5 of chapter 3 of the Political Code of 1895, which in these codes is sections 84-4715 to 84-4737.

References

Lumbermen's Trust Co. v. Town of Ryegate, 50 F 2d 219, 61 F 2d 14.

Collateral References

Gas⇐9; Steam⇐5; Municipal Corporations⇐293 (1), 294(1); Waters and Water Courses⇐194.

38 C.J.S. Gas §§ 3, 12, 20; 63 C.J.S. Municipal Corporations §§ 1092-1096.

11-2204. (5227) **Resolution of intention—notice—materials.** (1) Before creating any special improvement district for the purpose of making any of the improvements, or acquiring any private property for any purpose authorized by this act, the city council shall pass a resolution of intention so to do, which resolution shall designate the number of such district, describe the boundaries thereof, and state therein the general character of the improvement or improvements which are to be made, and an approximate estimate of the cost thereof; provided, however, that when any improvement is to be made in paving, the city or town council may in describing the general character of the same describe several kinds of paving.

(2) Upon having passed such resolution the council must give notice of the passage of such resolution of intention, which notice must be published for five days in a daily newspaper, or in some one issue of a weekly paper published in the city or town, or in case no newspaper be published in such city, then by posting for five days in three public places in the city or town, and a copy of such notice shall be mailed to every person, firm, or corporation, or the agent of such person, firm, or corporation having real property within the proposed district listed in his name upon the last completed assessment roll for state, county and school district taxes, at his last known address, upon the same day such notice is first published or posted. Such notice must describe the general character of the improvement or the improvements so proposed to be made, and state the estimated cost thereof, and designate the time when and the place where the council will hear and pass upon all protests that may be made against the making of such improvements, or the creation of such dis-

trict; and said notice shall refer to the resolution on file in the office of the city clerk for the description of the boundaries. The city council may include in one proceeding under one resolution of intention and in one contract any of the different kinds of work mentioned in this act, and any number of streets and rights of way, or portions thereof, and it may except therefrom any of said work, already done, upon a street to the official grade.

(3) Where the special improvement contemplated is the paving of a street in which car tracks have been constructed, the city shall have the power and authority to order the general character of the material between the rails and one foot on each side of the rails to be of a different kind from that used in the remainder of the street; providing that the general character of the material to be used between the car tracks and one foot on each side of the rails be described in the resolution of intention, in the same manner as the general character of the material used for the rest of the contemplated pavement.

(4) The lots or portions of lots fronting upon said excepted work, already done, shall not be included in the assessment for the class of work from which the exception is made; provided, that this shall not be construed so as to affect the special provisions as to grading contained in section 11-2214 of this code.

History: En. Sec. 3, Ch. 89, L. 1913; amd. Sec. 2, Ch. 142, L. 1915; re-en. Sec. 5227, R. C. M. 1921; amd. Sec. 1, Ch. 261, L. 1959.

Boundary

Under this section, a city has the power to fix the boundary of a special improvement district at any distance from the front line of a street and is not required to include the whole platted area of each lot. Ricker v. City of Helena, 68 M 350, 360, 218 P 1049.

Construction of Section

The words "approximate estimate" should not be construed liberally. Koich v. City of Helena, 132 M 194, 315 P 2d 811, 814, 815.

Contracts May Not Exceed Approximate Estimate

The amount of the contract for improvements cannot legally exceed by seven and one-half per cent the "approximate estimate of the cost thereof" as included in the resolution of intention. Koich v. City of Helena, 132 M 194, 315 P 2d 811.

Departure from Resolution

In its resolution of intention to create a special improvement district, the city council must describe the character and nature of the contemplated improvements with sufficient particularity to advise the taxpayer affected, and the improvements to be made must correspond substantially with those set forth in the resolution, and no material change or departure therefrom can be made. Evans v. City of Helena, 60 M 577, 588, 199 P 445.

Under a resolution of intention to create a special improvement district for the purpose of paving streets, with the necessary excavations, cutting, filling, etc., and "incidental work," held that defendant city was properly enjoined from entering into a contract the provisions of which departed substantially from the purposes set forth in the resolution, in that they included reduction in the street widths and the construction of new parking, curbing and storm sewers, each of which constitutes a distinct city improvement under this section, and none of which was therefore subject to inclusion under the term "incidental work." Evans v. City of Helena, 60 M 577, 588, 199 P 445.

Description of Boundaries

By a resolution to create a special improvement district described as being bounded by certain lots, such lots were not incorporated in, but excluded from, the proposed district. City of Lewistown v. Warr, 52 M 353, 355, 157 P 953.

Discretion of Council

The city council as a special tribunal to conduct the hearing is clothed with limited powers only, and no presumption in favor of its jurisdiction will be indulged. The statute measures its authority, and compliance with the terms of the statute is a condition precedent to the right to

act. Johnston v. City of Hardin, 55 M 574, 579, 179 P 824.

In an action to set aside the proceedings of a city council had in the creation of a special street improvement district and to enjoin the carrying out of a paving contract entered into, on the grounds that the city had joined in one district property abutting on several streets, that the character of work to be done on one street was different from that to be done on others, and that property on several streets would not be benefited by the paving on another, proceedings reviewed and held, in view of the power lodged in the city council by this section to include in one district and in one contract any number of streets, any kind of work, etc., that the council did not abuse its discretion. Ricker v. City of Helena, 68 M 350, 360, 218 P 1049.

District Sewers

District sewers are such as accomplish the purpose of a sewer system without other or outside aid, except as they receive by the carrying off of their discharges by the main trunk line—the public sewer; such sewers may be constructed by the creation of special improvement districts, under this section, and paid for by assessing the cost of the improvement against the property within the districts created. Crutchfield v. Nash, 84 M 556, 563, 276 P 938.

Failure To Mail Notice

A special improvement district for the purpose of raising funds was void where one of the property owners affected was not mailed a notice. Wood v. City of Kalispell, 131 M 390, 310 P 2d 1058.

Faulty Proceedings in Creating District

Where no work has been done under contracts for the installation of a special improvement, or warrants issued, the claim that a liberal and indulgent view of faulty proceedings in creating the district should be taken has no merit. Cooper v. City of Bozeman, 54 M 277, 284, 169 P 801.

Necessary Steps To Create Districts

The successive steps necessary to be taken by a city council in the creation of a special improvement district are: (1) The adoption of a resolution of intention; (2) the service of the required notice; (3) a hearing and determination against protests; and (4) the passage of a resolution creating the district, the first three of which are jurisdictional, and a failure to take any one of these is fatal to the proceedings. Shapard v. City of Missoula, 49 M 269, 278, 141 P 544; Johnson v. City of Hardin, 55 M 574, 579, 179 P 824.

Newspaper Publishing Five Days a Week Is a Daily

The provision "must be published for five days in a daily newspaper," was met by publication for five consecutive days in a paper which constituted all its publications for a week; it having been held that a newspaper published five days in the week is a daily in the popular sense. Hansen v. City of Havre, 112 M 207, 212, 114 P 2d 1053.

Notice

Publication of a notice of intention to create a special improvement district which contained the proper reference to time and place for hearing objections to its final adoption was sufficient. Allen v. City of Butte, 55 M 205, 207, 175 P 595.

The caption of a notice is no part of the notice itself, and cannot be looked to to supply any deficiency in the notice. Johnston v. City of Hardin, 55 M 574, 581, 179 P 824.

In the absence of the statutory notice of the city council's intention to create a special improvement district, plaintiff property owner was not called upon to act, an inference deducible from his complaint that he had actual knowledge that his property was to be included in the proposed district being insufficient. Johnston v. City of Hardin, 55 M 574, 581, 179 P 824.

A resolution passed by the town council reciting the creation of an improvement district and that the resolution should be deemed one of intention to create, and creating it, followed by a description of its boundaries and of the character of the proposed improvements, with an estimate of the cost, etc., and that objections to its creation and the final adoption of the resolution would be heard in a certain place at a given time, held to have been in substantial compliance with statutory provisions. Harvey v. Town of Townsend, 57 M 407, 188 P 897.

Failure of the notice mentioned in this section to refer to the resolution for a description of boundaries is insufficient to vitiate the proceedings. Harvey v. Town of Townsend, 57 M 407, 188 P 897.

Until there is service of notice in strict compliance with the statute, no jurisdiction would attach to the municipality. Wood v. City of Kalispell, 131 M 390, 310 P 2d 1058.

Notice of the resolution of intention given by city to landowners was not sufficient where it did not contain an "approximate estimate" of the cost of improvements, the original estimate having been increased by seven and one-half per cent. Koich v. City of Helena, 132 M 194, 315 P 2d 811, 816.

The landowner whose property is affected by the special improvement district

must be given notice of the intention of the city's intent to create one. The notice must be sufficiently definite to apprise the landowner of the extent, nature and cost of the various improvements proposed. Koich v. City of Helena, 132 M 194, 315 P 2d 811, 814.

Parties who have either received notice or waived it by appearing to protest may not take advantage of the failure of notice to other parties who have neither protested nor appeared as parties to the suit. Shaw v. City of Kalispell, 135 M 284, 340 P 2d 523, explained in 140 M 211, 216, 369 P 2d 803.

This section does not require the city clerk to mail copies of the required notice to persons who are neither record owners nor personally known owners of an interest in property in the district, since they have been careless in failing to record their ownership. Shaw v. City of Kalispell, 135 M 284, 340 P 2d 523, explained in 140 M 211, 216, 369 P 2d 803.

Landowners who appear before the city council to protest the establishment of an improvement district do not thereby waive their right to restrain its establishment on the ground of defective publication of notice. Guffey v. City of Helena, 140 M 211, 369 P 2d 803, 806.

Public Hearing

The statute contemplates a public hearing where the various objections made to the resolution of intention may be aired before actual work on the project has commenced. Koich v. City of Helena, 132 M 194, 315 P 2d 811, 813.

Purpose of Resolution

Notification is the prime purpose of the statute so that taxpayers will not be burdened with some improvement which they do not want, cannot afford, or do not need. Koich v. City of Helena, 132 M 194, 315 P 2d 811, 813.

The essential purpose of a resolution of intention is to: (1) apprise the taxpayers that the city intends to propose a special improvement district; (2) what area will be encompassed in the district; (3) what type and character of improvements will be included within the district; and (4) the cost of the improvements to be made. Koich v. City of Helena, 132 M 194, 315 P 2d 811, 813.

Sufficiency of Resolution

Though a mere informality in the resolution of intention to create an improvement district would not have rendered the effort of the city council to acquire jurisdiction nugatory, if the subsequent steps had been pursued in conformity with the statute, the proceeding was abortive where a resolution of intention was deemed sufficient to bring about the creation of the district. Shapard v. City of Missoula, 49 M 269, 280, 141 P 544. Compare Cooper v. City of Bozeman, 54 M 277, 283, 169 P 801.

The resolution of intention is the primary step to be taken in every instance and is the basis of the whole proceeding, the omission of which is fatal and renders all the subsequent proceedings nugatory. Shapard v. City of Missoula, 49 M 269, 279, 141 P 544.

Proceedings for the imposition of a special improvement tax are in invitim, and before property can be held subject to the burden, it must be described with sufficient certainty that the owner cannot be misled; it being the intention of the statute that the resolution of intention shall contain a description of the proposed district by a line which marks its exterior boundaries. City of Lewistown v. Warr, 52 M 353, 355, 157 P 953.

Before a special improvement district can be created, the city council must pass a resolution of intention to do so, give notice of its passage, etc. Where the council, in an endeavor to create such a district, passed a resolution which proclaimed the creation of the district and an intention to assess the property liable for the cost of the improvement, the proceedings were void in limine for want of a proper resolution of intention. Cooper v. City of Bozeman, 54 M 277, 282, 169 P 801.

Failure to pass a proper resolution of intention to create a special improvement district cannot be corrected by subsequent interpretation at the hands of the council, to the effect that the resolution passed was meant to operate as one of intention. Cooper v. City of Bozeman, 54 M 277, 282, 169 P 801.

Where a resolution of intention to create a special improvement district described the boundaries of an entirely different district from that referred to in the notice served upon the owner of property affected, the city council did not acquire jurisdiction to proceed with the improvement. Johnston v. City of Hardin, 55 M 574, 580, 179 P 824.

A resolution of intention to create a special improvement district, the title of which stated that it was a "resolution of intention," etc., the body of which substantially contained the recitals required by statute and advised the taxpayers of the time and place where their objections to its creation would be heard, was sufficient as against the objection that in it the city council had not declared its intention to create it. Aiken v. City of Glendive, 60 M 1, 2, 197 P 1003.

Besides those requirements enumerated in subsection (1) of this section, the city commission must take two additional steps under section 11-2205 to have a valid resolution of intention for an "extended" dis-

trict. Smith v. City of Bozeman, 144 M 528, 398 P 2d 462.

Description contained in resolution of intention to establish special improvement district for purpose of raising funds to pay for water system and improvement held sufficient. Improvement was described as the construction of pipes, hydrants, and hose connections for irrigating appliances and fire protection which were to be installed upon and along certain designated streets, so that without reference to plans or specifications subsequently filed, the length of the pipe was fairly disclosed by the resolutions. Lumbermen's Trust Co. v. Town of Ryegate, 61 F 2d 14.

Where improvement was amply covered by general description contained in resolution of intention, that waterworks were to be constructed outside of special improvement district for purpose of furnishing water for pipes laid in district held immaterial, so far as concerns description of work chargeable to district. Lumbermen's Trust Co. v. Town of Ryegate, 61 F 2d 14.

References

Hawley v. City of Butte, 53 M 411, 412, 164 P 305; Almas v. City of Havre, 70 M 33, 35, 223 P 896; Thomas v. City of Missoula, 70 M 478, 483, 226 P 213; Cyr v. City of Missoula, 135 M 94, 337 P 2d 365, 366; Lumbermen's Trust Co. v. Town of Ryegate, 50 F 2d 219.

Collateral References

48 Am. Jur. 693, Special or Local Assessments, § 151 et seq.

Scope and import of term "owner" with respect to giving notice of making of public improvement. 95 ALR 1085, 1091.

DECISIONS UNDER FORMER LAW

Assessment upon Superficial Area

A resolution providing that the cost of a special street improvement, comprising principal as well as side streets, should be paid for by the levy of an assessment based upon the "superficial area" rule, was not void as inequitable, in that under it owners of inside lots were required to bear the same proportion of expense as owners of corner lots of the same area, although the benefits to accrue to the former are disproportionate to those received by the latter. Mansur v. City of Polson, 45 M 585, 595, 125 P 1002, approving McMillan v. City of Butte, 30 M 220, 76 P 203.

Departure from Resolution

One who charges that a contemplated municipal improvement has been materially and substantially changed by the city council from the original plan as evidenced by the resolution authorizing it, has the burden of proving the materiality of the change. Mansur v. City of Polson, 45 M 585, 594, 125 P 1002.

Notice

The contents of the resolution, in so far as they relate to notice of what improvements are contemplated, are for the legislature to dictate, and so long as a reasonably comprehensive notice is provided for, the courts have no power to declare it insufficient, and a detailed description of the work intended to be done is unnecessary. Mansur v. City of Polson, 45 M 585, 593, 125 P 1002.

Objection to Proposed Improvement

To make the complaint of a property holder asking a court of equity to be relieved from the payment of a special improvement tax levied on his property for the purpose of defraying the cost of the construction of a storm sewer on the alleged ground that his property was so situated that it could not be benefited by the sewer, proof against a general demurrer, it must set forth that plaintiff appeared at the time and place designated in the resolution of the council for hearing objections to the proposed improvement, and that his protest was ignored; otherwise, after the improvement is made and warrants issued in payment thereof, he is estopped upon the face of his pleading. Power v. City of Helena, 43 M 336, 342, 116 P 415.

Sufficiency of Resolution

Where a certain lot was assessed for municipal improvements for its entire area, the fact that only one-half of such lot was included in the description in the resolution creating the assessment district was immaterial. McMillan v. City of Butte, 30 M 220, 227, 76 P 203.

While a city council may not so change the nature of a special street improvement set forth in the resolution of intention as to be materially and substantially different from that authorized, and the cost of the same increased in proportion, work which substantially follows that outlined in the resolution, though omitting one feature of the contemplated improvement, is not open to complaint in this respect. Mansur v. City of Polson, 45 M 585, 594, 125 P 1002.

11-2205. (5228) **Assessment of extended district including lots not fronting on improvement.** Whenever the contemplated work of improve-

ment, in the opinion of the city council, is of more than local or ordinary public benefit, or whenever, according to estimates furnished by the city engineer, the total estimated costs and expenses thereof would exceed one-half of the total assessed value of the lots and lands assessed, if assessed upon the lots or lands fronting upon said proposed work or improvement, according to the valuation fixed by the last assessment roll whereon it was assessed for taxes for municipal purposes, the city council may make the expenses of such work or improvement chargeable upon an extended district and which may include other lots not fronting on the improvement, and which the said city council shall, in its resolution of intention, declare to be the district benefited by said work or improvements and to be assessed to pay the costs and expenses thereof.

History: En. Sec. 4, Ch. 89, L. 1913; re-en. Sec. 5228, R. C. M. 1921; amd. Sec. 1, Ch. 135, L. 1923; amd. Sec. 1, Ch. 150, L. 1929.

Method of Protest against Assessment

Where the language used by the city in its resolution of intention described an extended improvement district within the provisions of this section, the city was precluded by sections 11-2214 and 11-2206 (2) from considering protests or assessments on the lineal frontage basis. Smith v. City of Bozeman, 144 M 528, 398 P 2d 462.

Public Benefit

In an action to recover improvement taxes paid under protest, held that, this section not so providing, a resolution of intention to create an extended improvement district including lots not fronting on the improvement, for the purpose of installing water mains and fire protection apparatus, need not recite that the contemplated work was of more than local or ordinary public benefit, the adoption of the resolution being a sufficient finding that in the opinion of the city council the proposed improvement was of that character. Almas v. City of Havre, 70 M 33, 223 P 896.

Purpose of Assessment

Where a district was created for the purpose of paying for improvements at intersections as authorized by this section and another district was created under section 11-2214 to defray the cost of the street where it abuts on privately owned property there was in no sense double taxation. The assessments were for different purposes. One assessment was to raise money to defray the cost of the intersections and the other to defray the cost of the street where it abuts on privately owned property. Bidlingmeyer v. City of Deer Lodge, 128 M 292, 274 P 2d 821, 823.

Resolution of Intention

Only the second requirement of this section, that the extended improvement district to be created to be the district benefited by said work or improvements, and to be assessed to pay the costs and expenses thereof, need be stated in the resolution of intention, and where it is not, the resolution of intention is invalid. Smith v. City of Bozeman, 144 M 528, 398 P 2d 462.

Where the resolution of intention was incomplete, due to the failure of the city commission to comply with the requirements of this section, the city did not obtain jurisdiction to create the improvements regardless of the sufficiency of the protests under section 11-2206. Smith v. City of Bozeman, 144 M 528, 398 P 2d 462.

Sufficiency of Resolution

Besides those requirements enumerated in subsection (1) of section 11-2204, the city commission must take two additional steps under this section to have a valid resolution of intention for an "extended" district. Smith v. City of Bozeman, 144 M 528, 398 P 2d 462.

References

Lumbermen's Trust Co. v. Town of Ryegate, 50 F 2d 219, 61 F 2d 14.

Collateral References

Municipal Corporations⇐465.

63 C.J.S. Municipal Corporations § 1417 et seq.

11-2206. (5229) **Protests against proposed work.** (1) At any time within fifteen days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed

work, or against the extent or creation of the district to be assessed, or both. Such protest must be in writing, and be delivered to the clerk of the city or town council or commission, not later than 5 o'clock p. m. of the last day within said fifteen days period, and said clerk shall endorse thereon the date and hour of its receipt by him.

(2) At the next regular meeting of the city or town council or commission after the expiration of the time within which said protest may be so made, the city or town council or commission shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, that, except as hereinafter provided, when the protest is against the proposed work, and the cost thereof is to be assessed against property fronting thereon, and the city or town council or commission finds that such protest is made by the owners of more than forty per cent of the property fronting on the proposed work, or when the protest is against the proposed work, and the cost thereof is to be assessed upon the property within an extended district, and the city or town council or commission finds that such protest is made by the owners of more than forty per cent of the area of the property to be assessed for said improvements, no further proceedings shall be taken for a period of six months from the date when said sufficient protest shall have been received by said clerk of the city or town council or commission; provided, however, that when the improvement proposed is the paving, with necessary incidentals, of not more than one (1) cross block, to connect with streets or avenues already paved for a continuous distance of three (3) blocks or more running [at] a right angle, or substantially so, with the single cross block so proposed to be paved, in such case the city or town council or commission shall have the right to overrule any and all objections and pave the proposed block with gravel and oil surface; and provided, too, that in case the improvement is the construction of a sanitary sewer such protest may be overruled by an affirmative vote of a majority of the members of the city or town council or commission; unless such protest is made by the owners of more than seventy-five per cent of the property affected as herein provided, in which event the protest must be sustained as to the construction of such sanitary sewer.

(3) In determining whether or not sufficient protests have been filed on a proposed district to prevent further proceedings therein, property owned by a county, city, or town shall be considered to the same effect as other property in the proposed district. The city or town council or commission may adjourn said hearing from time to time and protestants shall have the right to withdraw protest or protests at any time before final action thereon by the city or town council or commission.

History: En. Sec. 5, Ch. 89, L. 1913; amd. Sec. 3, Ch. 142, L. 1915; re-en. Sec. 5229, R. C. M. 1921; amd. Sec. 2, Ch. 135, L. 1923; amd. Sec. 1, Ch. 36, L. 1939.

Compiler's Note

The compiler has inserted the bracketed word "at" in subsection (2).

Construction of Section

The provision of this section that objections to a proposed special improvement shall be heard at the next regular meeting of the city council after the expiration of the fifteen days in which protest can be made, etc., is directory only. Harvey v. Town of Townsend, 57 M 407, 188 P 897.

Contracts May Not Exceed Approximate Estimate

Under section 11-2204 the amount of the contract for improvements cannot legally

exceed by seven and one-half per cent the "approximate estimate of the cost thereof" as included in the resolution of intention. Koich v. City of Helena, 132 M 194, 315 P 2d 811.

Determination of Area of Protest

The phrase, "the area of the property to be assessed," as used in subsection (2) of this section to describe those persons entitled to protest creation of an improvement district, depends upon the method of assessment used by the city under section 11-2214. Smith v. City of Bozeman, 144 M 528, 398 P 2d 462.

Determination of Protests

Under the theory that a municipality may levy assessments for special improvements because the property will be benefited by the improvements to the extent of the burden imposed, protests must be weighed in the same manner as the assessments to give a greater voice to those who pay a greater amount of the tax. Smith v. City of Bozeman, 144 M 528, 398 P 2d 462.

Etoppel to Protest

The question of estoppel under section 11-2223 does not preclude a property owner from protesting a figure used as the "assessable area" in a resolution of intention for purposes of determining the sufficiency of the protest under this section, since it applies only to the actual assessment as stated in the resolution of assessment. Smith v. City of Bozeman, 144 M 528, 398 P 2d 462.

Invalid Assessment

Where the city commission proceeded to create a special improvement district notwithstanding the fact that owners of more than forty per cent of the area of the property to be assessed had protested against the proposed work, the improvements should not have been made and the assessment was void. Smith v. City of Bozeman, 144 M 528, 398 P 2d 462.

Jurisdiction

The phrase, "area of the property to be assessed," should be equated with the "assessable area," rather than the "actual area" of the district, so that where protestants owned 131,312.8 square feet of an assessable area figured by the city in its resolution of intention as 299,163.20 square feet, 43.89 per cent of the area actually assessed protested and the city was without jurisdiction to create the district. Smith v. City of Bozeman, 144 M 528, 398 P 2d 462.

Property Owned by City Also Must Be Computed

In determining whether forty per cent of the owners of property affected by a proposed special improvement have filed protests against it, the city or town council is authorized by this section to take into consideration property owned by it and included in the district, such property being subject to assessment therefor the same as privately owned property. Ricker v. City of Helena, 68 M 350, 358, 218 P 1049.

Sufficiency of Protest

An alleged protest to street paving, filed by abutting owners, stating the reasons why they did not desire the paving done during a certain year, and stating that they were willing to have the street paved two years later, and that payment therefor should be required in three annual installments, was not an unqualified protest to the paving. McMillan v. City of Butte, 30 M 220, 228, 229, 76 P 203.

Where the language used by the city in its resolution of intention described an extended improvement district within the provisions of section 11-2205, the city was precluded by section 11-2214, subsection (2), from considering protests or assessments on the lineal frontage basis. Smith v. City of Bozeman, 144 M 528, 398 P 2d 462.

If the owners of more than forty per cent of the area of the property to be assessed protest against either the extent or creation of an improvement district, the city is without jurisdiction to proceed with the improvement. Smith v. City of Bozeman, 144 M 528, 398 P 2d 462.

Withdrawal from Protest

A property owner in a city, who has signed a protest against the creation of a special improvement district, may, within the time allowed for presenting such protest, withdraw therefrom, and thus defeat the protest. Hawley v. City of Butte, 53 M 411, 413, 164 P 305.

References

Shapard v. City of Missoula, 49 M 269, 277, 141 P 544; Cooper v. City of Bozeman, 54 M 277, 281, 169 P 801; School District No. 1 v. City of Helena, 87 M 300, 309, 287 P 164; Adkins v. Livingston, 121 M 528, 194 P 2d 238, 240; Wood v. City of Kalispell, 131 M 390, 310 P 2d 1058, 1061; Cyr v. City of Missoula, 135 M 94, 337 P 2d 365, 366; Shaw v. City of Kalispell, 135 M 284, 340 P 2d 523, 528; Lumbermen's Trust Co. v. Town of Ryegate, 50 F 2d 219, 61 F 2d 14.

Collateral References

Municipal Corporations⇐297 (1), 299, 491.

63 C.J.S. Municipal Corporations §§ 1097, 1103, 1478.

48 Am. Jur. 693, Special or Local Assessments, § 151 et seq.

Loss of right to contest an assessment in a street or sewer improvement or drainage proceeding. 9 ALR 634 and 842.

Failure of property owner to avail himself of remedy provided by statute or ordinance as precluding attack based on improper inclusion of property in, or exclusion of property from, assessment. 100 ALR 1292.

DECISIONS UNDER FORMER LAW

Effect of Action against Protest

Taxes levied by a city for special improvement purposes are absolutely void, where the city council proceeds to create an improvement district, notwithstanding owners representing more than one-half of the area of the property to be assessed to defray the cost of such improvement, appear before it and object to the adoption of the resolution creating the district for the purpose indicated. Hensley v. City of Butte, 33 M 206, 210, 83 P 481.

Protest against Improvements

For a decision under a former statute in regard to the right of property owners to appear before the council and protest against the making of the proposed improvement, see Hensley v. City of Butte, 36 M 32, 92 P 34.

11-2207. (5230) **Jurisdiction to order proposed improvements.** When no protests have been delivered to the clerk of the city council within fifteen days after the date of the first publication of the notice of the passing of the resolution of intention, or when a protest shall have been found by said city council to be insufficient, or shall have been overruled, or when a protest against the extent of the proposed district shall have been heard and denied, immediately thereupon the city council shall be deemed to have acquired jurisdiction to order the proposed improvements. But before ordering any of said proposed improvements, the city council shall pass a resolution creating the said special improvement district in accordance with the resolution of intention theretofore introduced and passed by the city council.

History: En. Sec. 6, Ch. 89, L. 1913; amd. Sec. 4, Ch. 142, L. 1915; re-en. Sec. 5230, R. C. M. 1921.

Acquisition of Jurisdiction

It is only after the lapse of fifteen days from the first publication of notice of intention to create an improvement district, and after all protests have been disposed of adversely to objecting property owners, that the city council shall be deemed to have acquired jurisdiction to order the improvement. Shapard v. City of Missoula, 49 M 269, 278, 141 P 544.

Ordering Improvement

The passage of the resolution creating a special improvement district constitutes a sufficient order for the making of the contemplated improvements. Harvey v. Town of Townsend, 57 M 407, 188 P 897.

Waiver of Claim for Damages

By failure of an objecting property owner to give notice of defects or irregularities in the proceedings to the council within sixty days after the contract for the work is let, he waives all claim for damages, under this section. Harvey v. Town of Townsend, 57 M 407, 188 P 897.

References

Hawley v. City of Butte, 53 M 411, 412, 164 P 305; Cooper v. City of Bozeman, 54 M 277, 282, 169 P 801; Almas v. City of Havre, 70 M 33, 36, 223 P 896; Koich v. City of Helena, 132 M 194, 315 P 2d 811, 812.

Collateral References

Municipal Corporations⇐301.

63 C.J.S. Municipal Corporations § 1104 et seq.

11-2208. (5231) **Sufficiency of description after resolution of intention.** In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements, in any and all improvement districts, it shall be sufficient to briefly describe the work or the assessment district, or both, and to refer to the resolution of intention for the description and further particulars.

History: En. Sec. 7, Ch. 89, L. 1913; re-en. Sec. 5231, R. C. M. 1921; amd. Sec. 1, Ch. 71, L. 1955.

11-2209. (5232) **Bid for work and award of contract.** (1) Notice inviting proposals, and referring to the specifications on file, shall be published at least twice in a daily, semiweekly, or weekly newspaper, published and circulated in said city, designated by the council for that purpose, and in case there is no newspaper published in said city, then it shall be posted in at least three (3) public places.

The city council may call for bids or proposals for several kinds and types of materials for any improvements proposed to be made under sections 11-2201 to 11-2243 of this code, reserving the right to select the kind or type of material to be used in making any such improvements, after the bids or proposals therefor shall have been opened, examined, and declared.

(2) The time fixed for the opening of bids shall be not less than ten (10) days from the time of the final publication of said notice. All proposals or bids offered shall be accompanied by a check payable to the city, certified by a responsible bank for an amount which shall not be less than ten per centum (10%) of the aggregate of the proposal. Said proposals or bids shall be delivered to the clerk of the said city council, and said city council shall, in open session, publicly open, examine, and declare the same; provided, however, that no proposal or bids shall be considered unless accompanied by said check. The city council may reject any and all proposals or bids should it deem this for the public good, and also the bid of any party who has been delinquent or unfaithful in any former contract with the municipality, and shall reject all proposals or bids other than the lowest regular proposal or bid of any responsible bidder, and may award the contract for said work or improvement to the lowest responsible bidder at the prices named in his bid.

(3) If the bids are rejected, or no bids are received, the city council may, at any time within two (2) years thereafter, and whenever and as often as the city council deems it advantageous, readvertise for proposals or bids for the performance of the work as herein provided, without further proceedings, and thereafter proceed in the manner in this section provided, and shall thereupon return to the proper parties the checks corresponding to the bids so rejected. But the checks accompanying such accepted proposals or bids shall be held by the city clerk of said city until the contract for doing said work, as hereinafter provided, has been entered into, either by said lowest bidder, or by the owners of over fifty per centum (50%) of the frontage, whereupon said certified check shall be returned to said bidder. But if said bidder fails, neglects, or refuses to enter into the contract to perform said work or improvements, as hereinafter provided, then the certified check accompanying his bid, and the amount therein mentioned, shall be declared to be forfeited to said city, and shall be collected by it and paid into the general fund. The provisions hereof shall be applicable to all special improvement districts created within one (1) year preceding the passage and approval of this act.

History: En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R. C. M. 1921; amd. Sec. 1, Ch. 173, L. 1931.

Notice for Bids

Contracts for the construction of special street improvements, let without first giving ten days' notice for bids, and more than nine months after the award, were

invalid as in contravention of the provisions of this section. Cooper v. City of Bozeman, 54 M 277, 284, 169 P 801.

References

Koich v. City of Helena, 132 M 194, 315 P 2d 811, 812.

Collateral References

Municipal Corporations⇐331 et seq.

63 C.J.S. Municipal Corporations § 1147 et seq.

43 Am. Jur. 764, Public Works and Contracts, § 23 et seq.

Bidder's variation from specifications on bid for public work. 65 ALR 835.

Evasion of law requiring contract for public work to be let to lowest responsible bidder by subsequent changes in contract after it has been awarded pursuant to that law. 69 ALR 697.

What is an "emergency" within statutory provision excepting emergency contract or work for requirement of bidding on public contracts. 71 ALR 173.

Right in submitting proposal for bids on public works to require bid on unit basis, with reservation to public authorities of right to determine amount or extent of work. 79 ALR 225.

Mandamus to compel consideration, acceptance, or rejection of bids for public contract. 80 ALR 1382.

Right to award public contract to one other than lowest financial bidder as affected by fact that bidder furnishes bond. 86 ALR 131.

Change in proposals for public contract after submission of bid as justification for withdrawal of bid or refusal to enter into contract. 104 ALR 1149.

Labor conditions or relations as factor in determining lowest responsible bidder for public contract or as factor in determining whether public contract should be let to lowest bidder. 110 ALR 1406.

Statute requiring competitive bidding for public contract as affecting validity of agreement, subsequent to the award of the contract, to allow the contractor additional compensation for extras or additional labor and material not included in the written contract. 135 ALR 1265.

Liability of municipality or other governmental body on implied or quasi contract for value of property or work. 154 ALR 356.

Rights and remedies of bidder for public contract who has not entered into a contract, where bid was based on his own mistake of fact or that of his employees. 52 ALR 2d 792.

11-2210. (5233) **Contract by owner to do work.** The owners of three-fourths of the frontage of lots and lands liable to be assessed, or their agents, and who shall make oath that they are such owners or agents, shall not be required to present sealed proposals or bids, but may, within three days after the said award, elect to take such work and enter into a written contract to do the whole work at a price at least five per cent less than the price at which the same has been awarded, and all work done under such contract shall be subject to the same plans and specifications governing the lowest responsible bidder. Should the said owners fail to elect to take said work, and to enter into a written contract therefor within three days, or to commence the work within fifteen days after the date of such written contract, and to prosecute the same with diligence to completion, it shall be the duty of the city council to enter into a contract with the original bidder to whom the contract was awarded, and at the prices specified in his bid.

History: En. Sec. 9, Ch. 89, L. 1913; re-en. Sec. 5233, R. C. M. 1921.

Collateral References

Municipal Corporations⇐281 (1).

63 C.J.S. Municipal Corporations § 1070 et seq.

11-2211. (5234) **Reletting contract after default of contractor.** But if such original bidder neglects, fails, or refuses for fifteen (15) days after the notice of award to enter into the contract, then the city council, without further proceedings, shall again advertise for proposals or bids, as in the first instance, and award the contract for said work to the then lowest regular bidder. Should no bids be received in response to the call for

proposals, the council may again advertise for bids under the same proceedings at any time within six (6) months from the time set for the last reception of bids, and let the contract to the then lowest bidder, and such delay shall in no way affect the validity of any of the proceedings or assessments levied thereunder. The bids of all persons and the election of all owners, as aforesaid, who have failed to enter into the contract, as herein provided, shall be rejected in any bidding or election subsequent to the first for the same work.

History: En. Sec. 10, Ch. 89, L. 1913; re-en. Sec. 5234, R. C. M. 1921; amd. Sec. 2, Ch. 173, L. 1931.

Collateral References

Municipal Corporations⇐337.

63 C.J.S. Municipal Corporations § 1153.

11-2212. (5235) **Default of contractor—reletting of work.** If the contractor or owner who may have taken any contract does not complete the same within the time limited in the contract or within such further time as the city council may give him, the city engineer shall report such delinquency to the city council, which may relet the unfinished portion of said work after pursuing the formalities prescribed hereinbefore for the letting of the whole in the first instance; or the city shall have the right at its option to complete the contract, and deduct any cost in excess of the contract price thereof from any money, bonds, or warrants due such contractor, or owners, and in the event there is no money, bonds, or warrants due such contractor or owners, from which to deduct such cost, then and in such event the city shall have the right to sue such contractor or owners, and recover from him such cost.

History: En. Sec. 11, Ch. 89, L. 1913; amd. Sec. 6, Ch. 142, L. 1915; re-en. Sec. 5235, R. C. M. 1921.

Collateral References

Municipal Corporations⇐366, 367.

63 C.J.S. Municipal Corporations § 1201.

11-2213. (5236) **Bond of contractor.** All contractors, contracting owners included, shall, at the time of executing any contract for street work, execute a bond to the satisfaction and approval of the city council, with two or more sureties, and payable to such city, in a sum not less than twenty-five per cent of the amount of the contract, conditioned for the faithful performance of the contract, and indemnifying the city from any detriment, damage, or loss growing out of said work; and the sureties shall justify before any person competent to administer an oath, in double the amount mentioned in said bond, over and above all statutory exemptions; provided, however, that nothing herein contained shall be construed as to prevent or prohibit the city council from requiring or accepting in any case a bond furnished by a surety company authorized to transact business in the state of Montana.

History: En. Sec. 12, Ch. 89, L. 1913; re-en. Sec. 5236, R. C. M. 1921.

Collateral References

Municipal Corporations⇐345, 346.

63 C.J.S. Municipal Corporations § 1171 et seq.

43 Am. Jur. 879, Public Works and Contracts, § 137 et seq.

Right of person furnishing material or labor to maintain action on contractor's bond. 77 ALR 21 and 118 ALR 57.

11-2214. (5238) **Methods of payments of improvements.** (1) To defray the cost of the making of any of the improvements provided for in

this act, the city council or commission shall adopt one of the two following methods of assessment:

(a) The city council or commission shall assess the entire cost of such improvements against the entire district, each lot or parcel of land within such district to be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places; provided, however, that the city council or commission, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue or alley intersections, out of any funds in its hands, available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district. In order to equitably apportion the cost of any of the improvements herein provided for between that land within the district which lies within twenty-five (25) feet of the line of the street on which the improvement is to be made and all other land within the district, the council or commission may, in the resolution creating any improvement district, provide that the amount of the assessment against the property in such district, to defray the cost of such improvements, shall be so assessed that each square foot of land within the district lying within twenty-five (25) feet of the line of the street on which the improvements therein provided for are made shall bear double the amount of cost of such improvements per square foot of such land that each square foot of any other land within the district shall bear.

(b) The city council or commission shall assess the cost of such improvements against the entire district, each lot or parcel of land within such district, bordering or abutting upon street or streets whereon or wherein the improvement has been made, in proportion to the lineal feet abutting or bordering the same; provided, however, that this method of assessment shall not apply to assessments in improvement districts created under the provisions of section 11-2205 of this code; and provided, further, that the city council or commission, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersections out of any funds in its hands, available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district.

(2) Whenever any portion of the surface of a paved street is occupied or used for railway or street railway purposes, it shall be and continue to be the duty of the owner or operator of such railway or street railway to fully repair any injury or damage to such pavement caused by such railway or street railway either in the operation of its cars or in the laying or repair of its tracks, and in case of a failure or refusal of such owner or operator so to repair such pavement within a reasonable time after notice by the city council or commission, the city council or commission is authorized and empowered to cause such repairs to be made and to assess the cost thereof to such owner or operator and to enforce collection thereof as in the case of taxes.

(3) Whenever any lot, piece or parcel of land belonging to the United States, or mandatory of the government, shall front upon the proposed work or improvement, or be included within the district declared by

the city council in its resolution of intention to be the district to be assessed to pay the costs and expenses thereof, said council shall, in the resolution of intention, declare that said lots, pieces or parcels of land, or any of them, shall be omitted from the assessment thereafter to be made to cover the costs and expenses of said work or improvement, and the cost of said work or improvement in front of said lots, pieces or parcels of land shall be paid by the city from its general fund.

(4) It shall be lawful for the owner or owners of the lots or land fronting upon any street, the width and grade of which shall have been established by the city council or commission, to perform, at his or their own expense (after obtaining permission from the council or commission so to do, but before said council or commission has passed its resolution of intention to order grading exclusive of this), any grading upon said street, to its full width, or to the center line thereof and to its grade as then established, and thereupon to procure, at his or their own expense, a certificate from the city engineer, setting forth the number of cubic yards of cutting and filling made by him or them in such grading, and proportions performed by each owner, and that the same is done to establish width and grade of said street, or to the center line thereof, and thereafter to file said certificate with the city engineer, which certificate the engineer shall record in a book kept for that purpose in his office, properly indexed.

(5) Whenever thereafter the city council or commission orders the grading of said street, or any portion thereof, on which any grading certified as aforesaid has been done, the bids and contracts must express the price by the cubic yard for cutting and filling in grading; and the said owner or owners and his or their successors in interest shall be entitled to credit, on the assessment upon his or their lots and lands fronting on said street for the grading thereof, to the amount of the cubic yards of cutting and filling set forth in his or their certificate, at the prices named in the contract for said cutting and filling; or, if the grade meanwhile has been duly altered, only for so much of said certified work as would be required for grading to the altered grade; provided, however, that such owner or owners shall not be entitled to such credit as may be in excess of the assessments for grading upon the lots and lands owned by him or them, and proportionately assessed for the whole of said grading; and the city clerk shall include in the assessment for the whole of said grading upon the same grade the number of cubic yards of cutting and filling set forth in any and all certificates so recorded in his office, or for the whole of said grading to the duly altered grade so much of said certified work as would be required for grading thereto, and shall enter corresponding credits, deducting the same as payments upon the amounts assessed against the lots and land owned respectively, by said certified owners and their successors in interest; provided, however, that he shall not so include any grading quantities or credit any sums in excess of the proportionate assessments for the whole of the grading which are made upon any lots and lands fronting upon said street, and belonging to any such certified owners or their successors in interest.

(6) Whenever any owner or owners of any lots and lands fronting on any street shall have heretofore done, or shall hereafter do any work

(excepting grading) on such street, in front of any block, at his or their own expense, and the city council or commission shall subsequently order any work to be done of the same class in front of the same block, said work so done at the expense of such owner or owners shall be excepted from the order ordering work to be done; provided, that the work so done at the expense of such owner or owners shall be upon the official grade, and in condition satisfactory to the city engineer at the time said order is passed.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R. C. M. 1921; amd. Sec. 1, Ch. 163, L. 1925; amd. Sec. 1, Ch. 39, L. 1955.

Damages

Evidence to show the cost of filling plaintiff's lots and raising his buildings to grade, and the market value of the property before and after making the improvement, was competent and material in an action to recover damages occasioned by the change. Eby v. City of Lewistown, 55 M 113, 128, 173 P 1163.

Under allegations of the complaint that plaintiff's property had been permanently injured by change in street grade, rendered inaccessible and undesirable for the purposes for which used, necessitating large expenditures in filling and adjusting the lots to grade, etc., and defendant's denial of any damage whatever, the latter was entitled to introduce evidence tending to show that the property had not been injured or that the damage was less than claimed by plaintiff. Eby v. City of Lewistown, 55 M 113, 128, 173 P 1163.

Determination of Protests

Where the language used by the city in its resolution of intention described an extended improvement district within the provisions of section 11-2205, the city was precluded by section 11-2214, subsection (2), from considering protests or assessments on the lineal frontage basis. Smith v. City of Bozeman, 144 M 528, 398 P 2d 462.

Under the theory that a municipality may levy assessments for special improvements because the property will be benefited by the improvements to the extent of the burden imposed, protests must be weighed in the same manner as the assessments to give a greater voice to those who pay a greater amount of the tax. Smith v. City of Bozeman, 144 M 528, 398 P 2d 462.

Double Taxation

Where a district was created for the purpose of paying for improvements at intersections as authorized by section 11-2205 and another district was created to defray the cost of the street under this section there was in no sense double taxation. The assessments were for different purposes. One assessment was to raise money to defray the cost of the intersections and the other to defray the cost of the street where it abuts on privately owned property. Bidlingmeyer v. City of Deer Lodge, 128 M 292, 274 P 2d 821, 823.

Estoppel to Protest

The question of estoppel under section 11-2223 does not preclude a property owner from protesting a figure used as the "assessable area" in a resolution of intention for purposes of determining the sufficiency of the protest under section 11-2206, since it applies only to the actual assessment as stated in the resolution of assessment. Smith v. City of Bozeman, 144 M 528, 398 P 2d 462.

Invalid Assessment

Where the city commission proceeded to create a special improvement district notwithstanding the fact that owners of more than forty per cent of the area of the property to be assessed had protested against the proposed work, the improvements should not have been made and the assessment was void. Smith v. City of Bozeman, 144 M 528, 398 P 2d 462.

Jurisdiction

The phrase, "area of the property to be assessed," as used in section 11-2206, subsection (2), should be equated with the "assessable area," rather than the "actual area" of the district, so that where protestants owned 131,312.8 square feet of an assessable area figured by the city in its resolution of intention as 299,163.20 square feet, 43.89 per cent of the area actually assessed protested and the city was without jurisdiction to create the district. Smith v. City of Bozeman, 144 M 528, 398 P 2d 462.

Method of Assessment

Since there is a direct correlation between this section and subsection (2) of section 11-2206, as expressed in the phrase, "the area of the property to be assessed," the method of assessment used by the city governs the basis for determining those persons entitled to protest creation of an improvement district. Smith v. City of Bozeman, 144 M 528, 398 P 2d 462.

Necessity of Notice

All statutory requirements as to the form and contents of a special improvement assessment must be substantially complied with, they being regarded as mandatory and jurisdictional, and the apportionment of the cost is essential to the validity of the assessment, as is notice to the owners to enable them to be heard and contest if desired; failure to give notice will render the assessment void, whether or not notice is expressly required by law. Morse v. Kroger, 87 M 54, 60, 285 P 185.

Objections to District

To estop a taxpayer from attacking the validity of the creation of a special improvement district by payment of an installment of the tax, the payment must have been voluntarily made. A city could not be prejudiced by the payment of such installment tax, which, being invalid, it was not entitled to collect, and was therefore not in a position to claim an estoppel. City of Lewistown v. Warren, 52 M 356, 357, 157 P 954.

Public and District Sewer Distinguished

The cost of constructing a public sewer, as distinguished from a district sewer, must be provided for, under the next section, either from the general or sewer fund or by the sale of bonds, and may not be assessed on the basis of area under the special improvement district plan provided by this section. Rush v. Grandy, 66 M 222, 226, 213 P 242, distinguished in 130 M 158, 169, 297 P 2d 292.

Street Improvements

A city may create a special improvement district for street improvements where the street is also a part of a state highway and, in such instance, the contracts for the work must be awarded by the state highway commission. Wood v. City of Kalispell, 131 M 390, 310 P 2d 1058, 1062.

What May Be Assessed

An easement in a city street in favor of a railway company for right of way purposes in crossing it is not susceptible of assessment for a special improvement, where the basis adopted for apportioning the cost thereof is front footage; nor is the tract itself assessable under such plan, since under it the lot or parcel of land bordering or abutting on the street on which the improvement was made must bear the cost proportionately, and a street cannot border or abut upon itself. Chicago, Milwaukee & St. Paul Ry. Co. v. Poland, 54 M 497, 503, 172 P 541.

References

Stanley v. Jeffries, 86 M 114, 124, 284 P 134; School District No. 1 v. City of Helena, 87 M 300, 287 P 164.

Collateral References

Municipal Corporations⇐406 (1).

63 C.J.S. Municipal Corporations § 1294.

48 Am. Jur. 761, Special or Local Assessments, § 256 et seq.

Right of taxpayer to anticipate payment of tax or special improvement assessment for deferred installments thereof. 96 ALR 1475.

Effect of certificate or statement of treasurer or other public official regarding unpaid taxes or assessments against specific property. 107 ALR 568 and 21 ALR 2d 1273.

Duration of lien of special assessment and period of limitation of action for its enforcement as affected by adoption of installment plan of payment. 114 ALR 399.

Personal liability of property owner to pay assessments for local improvements. 127 ALR 551 and 167 ALR 1030.

11-2214.1. Authorization to issue bonds by improvement district formed for pedestrian malls or off-street parking. An improvement district formed for pedestrian malls or off-street parking shall be authorized to issue improvement bonds.

(a) When the governing body determines that improvement bonds be issued, it shall so declare in the resolution of intention for the work and shall specify the rate of interest which they shall bear. A like description of the bonds shall be inserted in all notices of the proceedings required to be published or posted, and a notice that the bonds will be paid from a special fund collected, in not to exceed twenty-five (25) annual installments, from the assessments of twenty-five dollars ($25) or over remaining unpaid thirty (30) days after the date of the warrant, or five (5) days after the decision of the governing body upon an objection. A like description of the bonds shall be included in the warrant.

(b) All other proceedings for the work up to and including the

approval of the assessment by the governing body, and including delivery of the assessment to the contractor, demand of payment of the several assessments and the return and record thereof, shall be in all respects as provided in this article.

History: En. 11-2214.1 by Sec. 2, Ch. 136, L. 1967.

11-2214.2. Assessments and bonds for pedestrian malls or off-street parking. (a) After expiration of the prescribed time from the date of the warrant, and after the treasurer has recorded the return, he shall make and certify to the clerk a complete list of all assessments unpaid, which amount to twenty-five dollars ($25) or over, upon any assessment.

(b) If any person before certification of the list to the clerk presents to the treasurer his affidavit that he is the owner of a lot in the list, accompanied by the certificate of a searcher of records that the person is the owner of record, and notifies the treasurer in writing that he desires no bond to be issued for the assessment upon the lot, then the assessment shall not be included in the list, and shall remain collectible as provided by this article. Omission to file the notice shall bar any defense against the bonds except the defense that the governing body did not have authority to issue the bonds.

(c) The clerk shall present the list to the governing body at its next meeting, and the body shall thereupon, by resolution, direct improvement bonds to be issued to the contractor for the amount of the assessments remaining unpaid, prescribing the number and denomination of the bonds, and the times when payable, which shall be so fixed that an approximately equal amount of the total sum shall be paid each year until the whole amount is paid, not exceeding twenty-five (25) years and three (3) months from the date of the bonds, but any fractional amounts may be added to the amount due in any year, so that the amounts due in all other years shall be in equal multiples of one hundred dollars ($100) each. Except for a bond to represent any odd amount due in any year, the denominations of the bonds shall be fixed at one hundred dollars ($100) or some multiple thereof, not exceeding one thousand dollars ($1,000). The resolution shall also fix the place, if any, other than the office of the treasurer, at which the bonds and the interest thereon shall be payable.

(d) The bonds shall be issued as of the date of the warrant, and shall bear interest from such date at the rate specified in the resolution of intention, not exceeding eight per cent (8%) per annum. They shall have semiannual interest coupons attached, the first of which shall be payable on January 1 or July 1, as the case may be, occurring ninety (90) days after the date of the bond, and shall be for the interest accrued at that time.

(e) The due date of all bonds shall be January 1 in the years in which they respectively become due.

History: En. 11-2214.2 by Sec. 3, Ch. 136, L. 1967.

11-2214.3. Certification of unpaid assessments—payments by installments—interest—and payments in advance for pedestrian malls and off-

street parking. (a) The treasurer at the time he certifies the list of assessments unpaid to the clerk, shall write the word "certified" on the record of the assessment opposite each assessment included in the list, and thereupon all assessments of twenty-five dollars ($25) or over shall cease to be payable in cash and shall thereafter be payable only in equal annual installments on December 1, in each year preceding January 1, on which the bonds become due. The governing body may provide a plan whereby the annual installment may be collected in partial payments prior to the time the installment is due, and the lien of each assessment on the property assessed shall continue and remain in full force and effect for two (2) years after the last installment on the assessment becomes due, or until the assessment is fully paid.

(b) An uncollected installment shall be added to the succeeding installment and, together with interest and penalties, shall be payable therewith.

(c) The number of installments in which the assessment is payable shall correspond to the number of years in which there are bonds to be paid, but the total number of installments shall not exceed twenty-five (25).

(d) All assessments of twenty-five dollars ($25) or more not paid before the certification of assessments unpaid to the clerk shall bear interest from the date of the warrant at the same rate as that specified for the bonds in the resolution of intention. The interest shall be payable on June 1, and December 1, of each year, immediately before the interest becomes due on the bonds, but the governing body may provide a plan whereby the interest may be collected in partial payments prior to the date it becomes due.

(e) The governing body may provide for receiving payment of the installments of the assessment before they become due, and using the proceeds thereof in redeeming such bonds as may be presented for redemption by the owners thereof, or for investing the proceeds in improvement bonds for other work or other satisfactory investment, but no investment of such funds shall be made so as to prejudice the prompt payment of the bonds on the date they become due.

History: En. 11-2214.3 by Sec. 4, Ch. 136, L. 1967.

11-2214.4. Improvement districts for providing off-street parking facilities—providing for the leasing of real property therefor, and for the improvement thereof. (a) In addition to the purposes [for] which an improvement district may be formed under the provisions of 11-2201, an improvement district may be formed for the sole purpose of leasing real property to be used as off-street parking sites, for the improvement of such off-street parking sites by grading, paving, ordering the installation of lighting poles, wires, conduits, lamps, standards and other appliances for the purpose of lighting and beautifying the off-street parking areas and entrances thereto, and for the operation and maintenance thereof.

(b) Subject to the powers granted and the limitations contained in this section, and in 11-2201, the powers and duties of the governing body

of the municipality and the procedure to be followed shall be as provided in this article for other types of special improvement districts.

(c) After the formation of a special improvement district, pursuant to the provisions of 11-2204, and as modified in 11-2214.5, and after having acquired jurisdiction to order the improvement pursuant to 11-2207, the governing body may, in addition to ordering the improvements set forth in subsection (a) of this section, enter into lease agreements for property within the limits of the assessment district for use as off-street parking sites, which lease agreements shall be upon such terms and conditions as the governing body may determine, and which lease agreements may provide that same may be terminated by either party upon six (6) months' prior written notice, and may contract for the operation and maintenance thereof. The governing body may enter into such lease agreements and contract for the operation and maintenance of such off-street parking sites without the publication of notice and invitation for bids.

(d) The governing body shall make annual statements and estimates of the expenses of the district, which shall be provided for by the levy and collection of ad valorem taxes upon the assessed value of all the real and personal property in the district, shall publish notice thereof, shall have hearings thereon and adopt at the times and in the manners provided for incorporated cities and towns by the applicable portions of section 11-2214. The governing body, on or before the second Monday in August of each year, shall fix, levy and assess the amount to be raised by ad valorem taxes upon all of the property of the district. All statutes providing for the levy and collection of state and county taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes, are applicable to the district taxes provided for under this section.

(e) An improvement district formed under provisions of this section shall not be authorized to issue improvement bonds, and no assessment for district purposes against the property within such district shall exceed twelve (12) mills upon each dollar of taxable valuation thereof in any tax year.

(f) No improvement district formed under provisions of this section shall be authorized to engage in any activity other than the leasing of off-street parking sites and the improvement, operation and maintenance of same. If the municipality is willing to participate in the cost of leasing, improving, operating or maintaining the off-street parking sites in such improvement districts, the governing body may, by resolution, summarily order such participation and the amount of any such participation shall not be subject to the limitations of section 11-2202.

(g) The formation of an improvement district for off-street parking purposes under the provisions of this section shall not prevent the subsequent establishment of improvement districts for any other purpose authorized by law.

(h) If in the opinion of the governing body, any portion of the territory of a district formed under this section is no longer benefited by the off-street parking sites provided, the governing body may, by resolution, summarily delete from the district formed under this section any

such area, and may form a new district from the balance of the original district formed under this section.

History: En. 11-2214.4 by Sec. 5, Ch. 136, L. 1967.

Compiler's Note

The compiler has inserted the bracketed word "for" in subsection (a).

11-2214.5. Special provisions relating to improvement districts for off-street parking purposes. (a) If a petition for the formation of an improvement district for the leasing, improvement or operation and maintenance of an off-street parking site is presented to the governing body purporting to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lien holders, the governing body, after verifying such ownership and making a finding of such fact, shall adopt a resolution of intention to order the improvement pursuant to the provisions of 11-2204, and shall have immediate jurisdiction to adopt the resolution ordering the improvement pursuant to provisions of 11-2207, without the necessity of the publication and posting of the resolution of intention provided for in 11-2204.

(b) If a petition for the formation of an improvement district for off-street parking purposes, and for the leasing of sites and improvement, operation and maintenance thereof is presented to the governing body, signed by the owners of a majority of the frontage of the property proposed to be contained within the limits of the assessment district, the governing body shall adopt a resolution of intention ordering the proposed improvement and cause same to be published and posted pursuant to the provisions of 11-2204.

History: En. 11-2214.5 by Sec. 6, Ch. 136, L. 1967.

11-2215. (5238.1) **Including and assessing unplatted lands in improvement district.** That whenever any unplatted, undedicated or unsurveyed lot, piece or parcel of land that separates one platted part of the city from another platted part of said city, lying wholly within the boundaries of any city or town, except land owned by the United States, shall abut or border upon any special improvement district, or be included within the boundaries of any special improvement district of such city or town, the council of such city or town may cause the same to be included within and made a part of such special improvement district, in the same manner as other property within such special improvement district and may assess the same for its proportionate share of the cost of making or maintaining such improvements in the same manner as other property within such special improvement district.

History: En. Sec. 1, Ch. 16, L. 1923.

Collateral References

Municipal Corporations⇨450 (2).

63 C.J.S. Municipal Corporations § 1362 et seq.

Enforceability, against undivided tract, of tax or special assessment levied against part of it at one rate and part at another. 112 ALR 73.

11-2216. (5239) **Sewer systems.** (1) A sewer system may be established in a city or town, which system may be divided into public, district and private sewers.

Public sewers may be established and constructed along the principal course of drainage at such times, to such an extent, of such dimensions and material, and under such regulations as may be prescribed by the council; and there may be constructed such branches and extensions of sewers already constructed, or to be constructed, as may be considered expedient.

(2) To defray the cost of such public sewers, the city or town council may appropriate moneys therefor from the general or sewer fund, or by availing itself of moneys derived from a bond issue authorized by the constitution and laws of the state. It is further provided that when a public or main sewer also serves as a district sewer, the city council may assess the property bordering or abutting upon such public sewer, either at the time of its construction or at any future time, for an amount equal to the estimated cost of such district sewer capable of accommodating such property.

(3) And/or to provide such sewer fund, and/or to provide for the retirement of such bonds, and/or the payment of the interest on such bonds, and/or for any purpose herein mentioned, the city council shall, upon being petitioned by five (5) per cent of the qualified electors who must be taxpaying freeholders, as shown by the last assessment for taxable purposes, at the annual municipal election or at any special election called for that purpose, submit to a vote to the qualified electors who must be taxpaying freeholders, the question whether or not the city council may establish and collect rentals for the use of such sewer system and may fix scale of such rentals and prescribe the manner and time at which such rentals shall be paid, and if a majority of votes is cast in favor of such proposition then the city or town council may establish and collect rentals for the use of any such sewer system and may fix the scale of such rentals and prescribe the manner and time at which such rentals should be paid and to change such scale of rentals from time to time as may be deemed advisable; providing, that the total revenue to be collected from all of the above sources in a given year shall be provided for by the council in such a manner as to provide funds for the payment of all bond issues and interest thereon, as well as for all necessary expenses of the operation, maintenance and repair of any such sewer system. For the purpose of making such rental charges equitable, property benefited thereby may be classified, taking into consideration the volume and character of sewage or waste and the nature of the use made of such sewage facilities. Said rentals shall be collected or taxed against the property in like manner as water rentals are collected and taxed, or by such procedure as may be prescribed by the city or town council, the revenues in this paragraph provided shall be in addition to and not exclusive of other revenues which may be now legally collected for sewer payment.

(4) The funds received from the collection of sewer rentals shall be kept as a separate and distinct fund by the city treasurer, subject only to disbursement by order of the council. This fund shall be used for (1) the payment of the cost of management, (2) maintenance, (3) operation and (4) repair of the sewage system, including treatment and disposal works, (5) for the creation of a sinking fund for the retirement of any indebted-

ness, (6) for the payment of interest on any such indebtedness, and any surplus in such fund may be used for the enlargement or replacement of the same and for the payment of the interest on any debt incurred for the construction of such sewage system, including sewage pumping, treatment and disposal works, and for retiring such debt, but shall not be used for the extension of a sewage system to serve unsewered areas or for any purpose other than one or more of those above specified.

(5) Any twenty-five (25) or more freeholders of such a municipality may file complaint with the public service commission to the effect that the rental charges so fixed are unreasonable or unjustly discriminatory, and the public service commission shall, upon public hearing thereon, file its findings and determination, stating therein in what respect, if any, said rental charges are unreasonable or unjustly discriminatory, and the municipality at interest shall forthwith readjust its rental charges so as to remove any unreasonable or unjustly discriminatory features so found by the public service commission.

(6) It is further provided that all the provisions of this act referring to sewer rentals, shall apply to special improvement districts for the constructing and maintaining and operating of sanitary sewers and storm sewers, as provided for in chapter 133, Laws of 1929 and the powers herein conferred on councils shall be and are hereby conferred on the several boards of county commissioners for the purposes of said chapter 133, Laws of 1929—in so far as the same relates to sewers.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R. C. M. 1921; amd. Sec. 1, Ch. 149, L. 1933.

NOTE.—The reference in subsection (6) to chapter 133, Laws of 1929, refers to sections 16-1601, 16-1611 and 16-1619 of these codes.

Benefit from Improvement

The theory upon which a municipality may levy an assessment for a special improvement, such as the construction of a sewer, is that the property charged receives a corresponding physical, material and substantial benefit from the improvement. Power v. City of Helena, 43 M 336, 341, 116 P 415, distinguished in 84 M 556, 564, 276 P 938.

Construction Costs

The cost of constructing a public sewer, as distinguished from a district sewer, must be provided for, under this section, either from the general or sewer fund or by the sale of bonds, and may not be assessed on the basis of area under the special improvement district plan provided by section 11-2215. Rush v. Grandy, 66 M 222, 226, 213 P 242, distinguished in 130 M 158, 169, 297 P 2d 292.

Payment of Expenses

Whether the expense of making a municipal improvement shall be paid out of the general treasury or be assessed upon abutting property or other property specially benefited, and, if in the latter mode, whether the assessment shall be upon all property found to be benefited or alone upon that abutting, is a question of legislative expediency. Crutchfield v. Nash, 84 M 556, 562, 276 P 938.

Public Sewer

A "trunk" sewer, i. e., one which receives the discharges from district sewers, is a public sewer within the meaning of this section. Rush v. Grandy, 66 M 222, 226, 213 P 242.

References

Crawford v. City of Billings, 130 M 158, 297 P 2d 292, 298.

Collateral References

Municipal Corporations⇨270, 712.

63 C.J.S. Municipal Corporations § 1049; 64 C.J.S. Municipal Corporations § 1802 et seq.

38 Am. Jur. 252, Municipal Corporations, § 565.

Loss of right to contest an assessment in a street or sewer improvement or drainage proceeding. 9 ALR 634 and 842.

Construction or improvement of sewers as a local or district improvement within provisions authorizing or requiring special assessments or other specified means of defraying expense. 134 ALR 895.

11-2217. Cities and towns may establish sewage treatment and disposal plants and systems and water supply and distribution systems. Any city or town may when authorized so to do by a majority vote of the qualified electors voting on the question establish, build, construct, reconstruct and/or extend a storm and/or sanitary sewerage system and/or a plant or plants for treatment or disposal of sewage therefrom, or a water supply and/or distribution system, or any combinations of such systems, and may operate and maintain such facilities for public use, and in addition to all other powers granted to it, such municipality shall have authority, by ordinance duly adopted by the governing body to charge just and equitable rates, charges or rentals for the services and benefits directly or indirectly furnished thereby. Such rates, charges or rentals shall be as nearly as possible equitable in proportion to the services and benefits rendered, and sewer charges may take into consideration the quantity of sewage produced and its concentration and water pollution qualities in general and the cost of disposal of sewage and storm waters. The sewer charges may be fixed on the basis of water consumption or any other equitable basis the governing body may deem appropriate and, if the governing body determines that the sewage treatment and/or storm water disposal prevents pollution of sources of water supply, may be established as a surcharge on the water bills of water consumers or on any other equitable basis of measuring the use and benefits of such facilities and services. In the event of nonpayment of charges for either water or sewer service and benefits to any premises, the governing body may direct the supply of water to such premises to be discontinued until such charges are paid.

In this act "qualified electors" shall mean registered electors of the municipality whose names appear upon the last preceding assessment roll for state and county taxes as taxpayers upon property within the municipality. The question of building, constructing, reconstructing or extending the system, plant or plants and the question of issuing and selling revenue bonds for such purpose may be submitted as a single proposition or as separate propositions. Any election under this act may be called by a resolution of the governing body which it may adopt without being previously petitioned to do so.

History: En. Sec. 1, Ch. 149, L. 1943; amd. Sec. 1, Ch. 100, L. 1947; amd. Sec. 1, Ch. 98, L. 1955.

Constitutionality

Legal electors and owners of property within city were not the proper parties to attack the constitutionality of this section and section 11-2221 on the basis that some persons will have to pay who cannot vote or on the grounds that certain persons outside the city might be charged. City of Billings v. Nore, 148 M 96, 417 P 2d 458, 464, 468.

This section and section 11-2221 are not objectionable on the ground of unreasonable classification because there are taxpayers who could vote upon storm sewer project but would not be required to pay for it. City of Billings v. Nore, 148 M 96, 417 P 2d 458, 464, 468.

Construction of Section

The language of this section does not require a finding of prevention of pollution before rates and charges can be assessed to pay for the storm sewer system. City of Billings v. Nore, 148 M 96, 417 P 2d 458, 468.

11-2218. May issue revenue bonds—sinking fund—refunding revenue bonds. (1) Any such municipality may issue and sell negotiable rev-

enue bonds for the construction of any such water or sewer system or combined water and sewer system when authorized so to do by a majority vote of the qualified electors voting on the question at an election called by the city council or other governing body of the municipality for that purpose, and noticed and conducted in accordance with the provisions of sections 11-2308 to 11-2310, inclusive; which bonds shall bear interest at a rate or rates and shall be sold at a price resulting in an average net interest cost, computed to the stated bond maturity dates, of not more than six per cent (6%) per annum and all bonds shall mature within forty (40) years from date of bonds, and may be registered as to ownership of principal only with the treasurer of said municipality, if so directed by the governing body. No bonds shall be sold for less than par, and each of said bonds shall state plainly on its face that it is payable only from a sinking fund, naming said fund and the ordinance and resolution creating it, and that it does not create an indebtedness within the meaning of any charter, statutory or constitutional limitation upon the incurring of indebtedness.

(2) Prior to the issuance of said bonds the city council or other governing body of such municipality shall adopt an ordinance or resolution authorizing the issuance and sale of said bonds, and must create a sinking fund for the payment of the bonds and the interest thereon and charges of the fiscal agency for making payment of the bonds and interest thereon.

(3) At or before the issuance and sale of any such bonds, the governing body shall, by resolution or ordinance, set aside to such sinking fund and pledge to the payment of the bonds and the interest thereon the net income and revenues of the system, including all additions thereto and replacements and improvements thereof subsequently constructed or acquired, up to an amount sufficient to provide for the payment of the principal and the interest on the bonds as such principal and interest shall become due and payable, and to accumulate and maintain reserves securing such payments in such amount as shall be deemed by the governing body to be necessary and expedient.

(4) The said net income and revenues above-mentioned shall be construed to mean all the gross income from said system less normal, reasonable and current expenses of operation and maintenance thereof.

(5) Said payments above-mentioned shall constitute a first and prior charge and lien on the entire net income and revenues derived from the operation of said system, provided that the governing body shall have power from time to time to establish the relative priority of the liens of successive issues of bonds upon said net income and revenues, subject to any restrictions contained in the ordinances or resolutions authorizing bonds of prior issues.

(6) Any such municipality, by ordinance or resolution adopted by its governing body, and without an election, may issue and sell negotiable revenue bonds in the manner provided in this section, to refund bonds previously issued for any of the foregoing purposes, whether issued under authority of this section or any other applicable law. Refunding bonds may, with the consent of the holders of the bonds to be refunded thereby,

be exchanged at par plus accrued interest for all or part of such bonds, or may be sold at a price not less than par plus accrued interest, but nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor, except in accordance with the terms of such outstanding bond. Bonds may be issued to refund interest as well as principal actually due and payable if the revenues pledged therefor are not sufficient, but not to refund any principal or interest due which can be paid from revenues then on hand.

(7) Any municipality having issued bonds payable from net revenues of its water and sewer system or combined water and sewer systems, whether under authority of this section or otherwise, may issue additional bonds after authorization by the qualified electors in the manner hereinabove provided, to finance the reconstruction and improvement of such system and the construction of additions thereto, and may provide that such additional bonds shall be payable from said net revenues on a parity with the outstanding bonds of such previous issues, subject to any restrictions upon such issuance which may be imposed by the resolutions or ordinances authorizing said outstanding bonds; or the governing body may provide for the issuance of refunding bonds, without an election, to retire such outstanding bonds and may, if desired, combine such refunding issue with the issue authorized by the electors for reconstruction, improvements and additions, or may include the amount required for such refunding in the amount of such additional issue when submitted to the electors.

(8) Refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby, if they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient, or if the refunding bonds are combined with an issue of new bonds for reconstruction, improvements and additions and the lien of such new bonds upon the revenues of the system or systems must be junior and subordinate to the lien of the outstanding bonds refunded, under the terms of the ordinances or resolutions authorizing the outstanding bonds, as applied to circumstances existing on the date of refunding. Except as authorized in the preceding sentence, refunding bonds shall not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least three-eighths of one per cent (⅜ of 1%) less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.

(9) In any case where refunding bonds are issued and sold six (6) months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, which is a member of the federal reserve system and has a combined capital and surplus not less than one million dollars ($1,000,000), and shall be invested in such amount and in securities maturing on such dates

and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which such bond may be called for redemption, and to pay and redeem the principal amount of each such bond at maturity, or, if prepayable, at its earliest redemption date, and any premium required for redemption on such date; and the resolution or ordinance authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom, and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for co-operatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds.

(10) Revenues and other funds on hand, in excess of amounts pledged by ordinances and resolutions authorizing outstanding bonds for the payment of principal and interest currently due thereon and reserves securing such payment, may be used to pay the expenses incurred by the municipality for the purpose of such refunding, including but without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents. Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of such bonds and may be invested and disbursed as provided in subsection (9) hereof, to the extent consistent with the ordinances or resolutions authorizing such outstanding bonds.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963.

Constitutionality

This section is constitutional. City of Billings v. Nore, 148 M 96, 417 P 2d 458, 464.

Collateral References

Municipal Corporations⇨911, 951; Waters and Water Courses⇨203 (1), (5).

64 C.J.S. Municipal Corporations §§ 1907, 1953; 94 C.J.S. Waters § 284.

11-2219. Rates and charges for services. The governing body of such municipality shall have full power and authority, and it is hereby made its duty to fix and establish, on the basis of water consumed or any other equitable basis, by ordinance or resolution, and collect rates and charges for the services and facilities afforded by the system.

The rates and charges established for the services and facilities afforded by this system shall be sufficient in each year to provide income and revenues adequate for the payment of the reasonable expense of operation and maintenance and for the payment of the sums required to be paid into the sinking fund and for the accumulation of such reserves and the making of such expenditures for depreciation and replacement of said system as shall be determined necessary from time to time by the govern-

ing body, or as shall have been covenanted in the ordinances and resolutions authorizing the outstanding bonds.

The governing body shall have the right to change and readjust from time to time the rates and charges so fixed and established provided the aggregate of such rates and charges shall always be sufficient to meet the requirements mentioned in preceding paragraph.

History: En. Sec. 3, Ch. 149, L. 1943; amd. Sec. 3, Ch. 98, L. 1955.

Constitutionality

This section is constitutional. City of Billings v. Nore, 148 M 96, 417 P 2d 458, 468.

11-2220. Income to be kept separately. After any municipality has issued and sold revenue bonds under this act, it must keep all income and revenues derived from the operation of the system separate and distinct from all other revenues and shall keep books and accounts for such system separate and distinct from all other books and accounts.

The governing body shall maintain a sufficient balance of cash in the sinking fund for the payment of principal and interest currently due on outstanding revenue bonds, but may in its discretion, and subject to any restrictions contained in the ordinances or resolutions authorizing such bonds, invest moneys in said sinking fund, or other net revenues held in reserves for bond payments, replacements or depreciation, in general obligation bonds of the United States of America or of the municipality itself. The income from all such investments shall remain part of the sinking fund or reserve from which the investment was purchased, and all such investments shall be collected at maturity or shall be sold when necessary to provide cash for the purposes of said sinking fund and reserves. Subject to the provisions of any such ordinances or resolutions the governing body may also apply net revenues to the purchase of outstanding revenue bonds which are not yet prepayable according to their terms, at such price as will yield a net return to the municipality, computed to the earliest redemption date of such bonds, and for the redemption of any of said bonds as and when the same become prepayable according to their terms.

Any such bonds and interest thereon shall be a valid claim of the holders thereof only against the sinking fund and the net income and revenues of the system pledged thereto and shall not constitute an indebtedness of the municipality within the meaning of any charter, statutory or constitutional limitation upon the incurring of indebtedness.

History: En. Sec. 4, Ch. 149, L. 1943; amd. Sec. 4, Ch. 98, L. 1955.

Constitutionality

This section is constitutional. City of Billings v. Nore, 148 M 96, 417 P 2d 458, 468.

11-2220.1. Powers and duties of public service commission unaffected. Nothing contained in this act shall be construed to change or affect the powers and the duties of the public service commission of Montana prescribed in chapter 1 of Title 70 of the Revised Codes of Montana of 1947.

History: En. Sec. 5, Ch. 98, L. 1955.

Compiler's Note

The words "this act" refer to chapter 98, Laws of 1955, the other provisions of which are compiled as sections 11-2217 to 11-2220.

11-2221. Covenants with holders of bonds—users of system must pay for service—no tax liability incurred—registration of bonds. Any municipality issuing bonds under this act shall have the right to covenant with the holders of the bonds as to (a) the purpose to which the proceeds received from the sale of the bonds shall be applied and the use and disposition there; (b) the use and disposition of the income and revenues derived from the operation of the system; (c) the issuance and sale of additional bonds payable from the income and revenues of the system; (d) the operation and maintenance of the system; (e) the insurance to be carried hereon and the disposition of the insurance moneys; (f) its books of account and the inspection and audit thereof and its accounting methods; (g) rates and charges for the services and facilities afforded by the system, and any other matters pertaining to the manner of handling this system and care and manner of paying the revenues on the bonds and interest.

No person, firm or corporation shall be permitted to use said system, except they pay the full and established rate for said service.

Nothing contained in this act shall be construed to permit the municipality to incur, under the provisions thereof, any obligation for the payment of which taxes may be levied.

Any bonds issued under this act may be registered with the city treasurer of said municipality.

History: En. Sec. 5, Ch. 149, L. 1943.

Constitutionality

This section and section 11-2217 are not objectionable on the ground of unreasonable classification because there are taxpayers who could vote upon storm sewer project but would not be required to pay for it. City of Billings v. Nore, 148 M 96, 417 P 2d 458, 464, 468.

Legal electors and owners of property within city were not the proper parties to attack the constitutionality of this section and section 11-2217 on the basis that some persons will have to pay who cannot vote or on the grounds that certain persons outside the city might be charged. City of Billings v. Nore, 148 M 96, 417 P 2d 458, 464, 468.

11-2222. (5240) **Assessment to pay cost of improvements.** To defray the cost of making improvements in any special improvement district, or of acquiring property for the opening, widening, or extending any street or alley, or to defray the cost and expense of changing any grade of any street, avenue, or alley, the city council shall by resolution levy and assess a tax upon all property in any district created for such purpose, by using for a basis for assessment one of the methods set forth in section 11-2214 of this code. Such resolutions shall contain a description of each lot and parcel of land, with the name of the owner, if known, and the amount of each partial payment to be made, and the day when the same shall become delinquent.

The payment of assessments to defray the cost of constructing any improvements in special improvement districts may be spread over a term of not to exceed twenty years, payments to be made in equal annual installments.

History: En. Sec. 16, Ch. 89, L. 1913; amd. Sec. 7, Ch. 142, L. 1915; re-en. Sec. 5240, R. C. M. 1921.

Assessments To Include Interest to Maturity

Special improvement district bonds are not general obligations of the city, and

their payment is strictly limited to the fund provided by statute and ordinance; the lien of the assessments extends to each lot or parcel of land separately, and not jointly, and payment thereof on one lot or issue of tax deed thereon discharges the lien thereon; assessments upon property in the district, must, under this section, include the interest on the bonds to maturity, as part of the cost of such improvements. State ex rel. Griffith v. City of Shelby, 107 M 571, 576, 87 P 2d 183.

Collateral References

Municipal Corporations⇨406 (1), 449 (3).

63 C.J.S. Municipal Corporations §§ 1294, 1391.

38 Am. Jur. 78, Municipal Corporations, § 389 et seq.

Assessment of parkway occupied by street railway company for street improvement. 10 ALR 164.

Validity and effect of condition of dedication that remaining property shall not be subject to assessments for improvements. 16 ALR 499 and 37 ALR 1357.

Liability of railroad or street railway which paves or is liable for paving occupied portion of street to assessment for improvement of remainder. 29 ALR 679.

Assessment of railroad right of way for local improvements. 37 ALR 219 and 82 ALR 425.

Liability of municipality in consequence of its inability, refusal, or failure to collect the cost of local improvements from the property benefited. 38 ALR 1271; 51 ALR 973 and 172 ALR 1030.

Excessiveness or unfairness of assessment for highway improvement on property of railroad company. 48 ALR 497.

Assessments for improvements by the front-foot rule. 56 ALR 941.

Assessment of right of way other than that of railroad or street railway for street or local improvement. 58 ALR 127.

Cemetery property and cemetery lots as subject to assessment for public improvement, in absence of express exemption. 71 ALR 322.

Liability of abutting property to assessment for street paving as affected by character or extent of traffic. 73 ALR 1295.

Homestead as subject to assessment for local imporvements. 79 ALR 712.

Property unit for purposes of assessment for street or other local improvement as affected by owner's disregard of original lot lines or creation of new ones. 104 ALR 1049.

Constitutionality of statutes relieving property subject to assessment for improvement from all or part of such assessment. 105 ALR 1169.

Prohibition to prevent levy of assessments. 115 ALR 3, 20 and 159 ALR 627.

Personal liability of property owner to pay assessments for local improvements. 127 ALR 551 and 167 ALR 1030.

Right of landowner to recover back benefit assessments, upon ground of abandonment of improvement project. 145 ALR 1129.

11-2223. (5241) **Hearing of objections—modification of assessment.** Such resolution, signed by the mayor and clerk, shall be kept on file in the office of the city clerk, and a notice signed by the city clerk stating that the resolution levying the special assessment to defray the cost of such improvements is on file in his office, subject to inspection for a period of five days, shall be published at least once in a newspaper published in the city or town. Such notice shall state the time and place at which objections to the final adoption of such resolution will be heard by the council, and the time for such hearing shall not be less than five days after the publication of such notice. At the time so fixed the council shall meet and hear all such objections, and for that purpose may adjourn from day to day, and may, by resolution, modify such assessment in whole or in part. A copy of such resolution, certified by the city clerk, must be delivered to the city treasurer within two days after its passage.

History: En. Sec. 17, Ch. 89, L. 1913; re-en. Sec. 5241, R. C. M. 1921.

Estoppel to Protest

The question of estoppel under this section does not preclude a property owner from protesting a figure used as the "assessable area" in the resolution of intention for purposes of determining the sufficiency of the protest under section 11-2206, since it applies only to the actual assessment as stated in the resolution of assessment. Smith v. City of Bozeman, 144 M 528, 398 P 2d 462.

Collateral References

Municipal Corporations⇐455.

63 C.J.S. Municipal Corporations §1399.

48 Am. Jur. 693, Special or Local Assessments, § 151 et seq.

Loss of right to contest an assessment in a street or sewer improvement or drainage proceeding. 9 ALR 634 and 842.

Failure of property owner to avail himself of remedy provided by statute or ordinance as precluding attack based on improper inclusion of property in, or exclusion of property from, assessment. 100 ALR 1292.

11-2224. (5242) **Care of street parking—resolution levying assessment.** Where trees have been planted, grass plots constructed, and grass sown thereon, or any one or more of said improvements have been made in a special improvement district, it is hereby made the duty of the council of said city or town to cause said trees and grass to be watered, the grass cut, and trees trimmed, and to otherwise maintain and preserve said improvements, as the council shall deem suitable and proper, and the whole cost of maintaining said improvements, including the liquidation amount, if any, hereinafter provided for, shall be paid by assessing the entire district in either one of the two methods set forth in section 11-2214 of this code. It shall be the duty of said council to estimate, as near as practicable, the cost of maintaining the improvements in each district for the season; and before the first Monday in September of each year, the council shall pass and finally adopt a resolution levying and assessing all the property within the several districts with an amount equal to the whole cost of maintaining said improvements within the several districts, and in the manner hereinabove provided, and may further, until full liquidation is realized, include therein an amount not to exceed twenty per centum (20%) of any floating indebtedness, consisting of valid outstanding warrants drawn and issued against the maintenance funds of the respective districts, existing at the close of business on the 30th day of June, 1943, together with not to exceed such per centum of the current interest thereon from such last mentioned date, which moneys derived from such portion of such levy and assessment for such additional amount, if included in such levy and assessment, may only be expended toward liquidating such floating indebtedness, together with the interest thereon, and not otherwise. Said resolution levying assessments to defray the cost of maintenance of such improvement, including such additional amount, if any, towards liquidation of such floating indebtedness, shall be in every manner prepared and certified to the same as a resolution levying assessments for making improvements in said special improvement districts, and the money collected therefrom shall be paid into a fund known as "special improvement district No.....maintenance fund," the number of which shall correspond with the number of the special improvement district in which the improvements so maintained are situate; provided, however, that the city or town council shall have the power not more than once in a year of changing by resolution the boundaries of any maintenance district, but such change of boundaries shall not affect indebtedness existing at the time of such change.

History: En. Sec. 18, Ch. 89, L. 1913; re-en. Sec. 5242, R. C. M. 1921; amd. Sec. 1, Ch. 124, L. 1943.

Collateral References

Municipal Corporations⇐449 (1-3), 678.

63 C.J.S. Municipal Corporations § 1391; 64 C.J.S. Municipal Corporations § 1693.

11-2225. (5243) **Damages to property and payment thereof.** Whenever the owner or any one interested in any property situated within any special improvement district, after having filed with the clerk the written notice required by section 5237 of this code, shall be awarded or recover any amount on account of damages sustained to such property by reason of the construction of any improvement in said special improvement district, if the resolution levying assessment to defray the cost of making such improvements in said district has not been passed and adopted by the city council, the amount so awarded or recovered shall be added to and constitute a part of the cost of the making such improvements; but if the resolution levying assessments to defray the costs and expenses of making said improvements has been passed and adopted by the city council, it shall pass and adopt a supplemental resolution levying additional assessments against all the property in said district for the purpose of paying the amount so awarded or recovered. Said supplemental resolution shall be made and in every manner prepared and certified the same as the original resolution levying assessments to defray the cost of making such improvements.

History: En. Sec. 19, Ch. 89, L. 1913; re-en. Sec. 5243, R. C. M. 1921.

NOTE.—Section 5237, R. C. M. 1921, referred to in this section, which makes the giving of notice necessary in order to maintain an action for damages, was held unconstitutional in Eby v. City of Lewistown, 55 M 113, 120, 173 P 1163. Section 5237 was later repealed by Sec. 4, Ch. 50, Laws 1947.

References

Eby v. City of Lewistown, 55 M 113, 120, 173 P 1163.

Collateral References

Municipal Corporations⇐402 (1).
63 C.J.S. Municipal Corporations § 1264.

11-2226. (5244) **Construction of sidewalks, curbs and gutters without formation of special improvement district.** The city council may order sidewalks, curbs and gutters, or any combination thereof, constructed in front of any lot or parcel of land without the formation of a special improvement district, and whenever the council shall order any such sidewalk, curb and gutter, or any combination thereof, constructed, such order shall be entered upon the minutes of the council and shall name the street along which said sidewalk, curb and gutter, or any combination thereof, is to be constructed. After the making of such order, written notice thereof shall be given the owner or agent of such property, in such manner as the council may direct. If the owner or agent of such lot or parcel of land shall fail or neglect for a period of thirty days after the date of service of such notice to cause such sidewalk, curb and gutter, or any combination thereof, to be constructed, the city may construct or cause such sidewalk, curb and gutter, or any combination thereof, to be constructed, and shall assess the cost thereof, including engineering costs and the costs enumerated in section 11-2228 of this code, against the property in front of which the same is constructed.

When any such sidewalk, curb and gutter, or any combination thereof, is constructed by or under direction of the city council, payment for the construction thereof shall be made by special warrants in such form as may be prescribed by ordinance drawn against a fund to be known as

special sidewalk, curb and gutter fund, which warrants shall bear interest at the rate of six per centum (6%) per annum, and the council may provide for the payment of said interest annually.

The payment of assessments to defray the cost of construction of said sidewalks, curbs and gutters, or any combination thereof, may be spread over a term of not to exceed eight years, payment to be made in equal annual installments.

The city council shall annually, and before the first Monday of October of each year, pass and adopt a resolution levying an assessment and tax against each lot or parcel of land in front of which sidewalks, curbs and gutters, or any combination thereof, have been constructed under orders of the city council. Said resolution levying such assessment shall be in every manner prepared and certified the same as resolutions levying assessments for the making of improvements in special improvement districts.

History: En. Sec. 20, Ch. 89, L. 1913; re-en. Sec. 5244, R. C. M. 1921; amd. Sec. 1, Ch. 12, L. 1929; amd. Sec. 1, Ch. 19, L. 1965.

Collateral References

Municipal Corporations⇐269 (4), 281 (3), 449 (2).

63 C.J.S. Municipal Corporations §§ 1048, 1070 et seq., 1391.

11-2227. (5245) **Interest on assessments.** Upon all special assessments and taxes, levied and assessed in accordance with any of the provisions of this act, simple interest shall be charged at a rate not exceeding six per cent (6%) per annum, and the treasurer, in collecting such special assessment taxes, if the same are payable in one installment, shall collect such interest as may be shown to be due thereon by the resolution levying such assessment; and if such assessment be payable in installments the treasurer shall, at the time of collecting the first installment, collect such interest as may be shown to be due on such assessment by the resolution levying such assessment, and thereafter he shall collect with each subsequent installment interest on the whole amount remaining unpaid.

History: En. Sec. 21, Ch. 89, L. 1913; re-en. Sec. 5245, R. C. M. 1921; amd. Sec. 1, Ch. 51, L. 1937.

Collateral References

Municipal Corporations⇐518 (1).

63 C.J.S. Municipal Corporations § 1578.

11-2228. (5246) **Costs and expenses considered as cost of improvements.** The cost and expense connected with and incidental to the formation of any special improvement district, including costs of preparation of plans, specifications, maps, plats, engineering, superintendence, and inspection, and preparation of assessment rolls, shall be considered a part of the cost and expenses of making the improvements within such special improvement district; and it shall be the duty of the city engineer to keep an account of all costs and expenses incurred in his office in connection with every special improvement district, and certify the same to the city clerk, whose duty it shall be to prepare all necessary schedules and resolutions levying taxes and assessments in such special improvement districts.

History: En. Sec. 22, Ch. 89, L. 1913; re-en. Sec. 5246, R. C. M. 1921.

Contracts May Not Exceed Approximate Estimate

The amount of the contract for improvements cannot legally exceed by seven and

one-half per cent the "approximate estimate of the cost thereof" as included in the resolution of intention. Koich v. City of Helena, 132 M 194, 315 P 2d 811.

Collateral References

Municipal Corporations⚖460.

63 C.J.S. Municipal Corporations §§ 1411, 1412.

48 Am. Jur. 605, Special or Local Assessment, § 49 et seq.

Priority as between liens for public improvements. 5 ALR 1301 and 99 ALR 1478.

Assessment of right of way other than that of railroad or street railway for street or local improvement. 58 ALR 127.

Power to impose cost of maintenance or operation of street lighting system on local improvement district. 60 ALR 272.

Necessity that additional assessment in proceeding for local improvement precede incurring liability in excess of the original assessment. 63 ALR 1179.

Priorities between lien of general taxes and the lien of special assessments. 65 ALR 1379.

Constitutionality of statue giving priority to lien for public improvements over pre-existing contractual liens. 78 ALR 513.

Assessment of railroad right of way for local improvements. 82 ALR 425.

Manner of enforcing special assessments against public property. 95 ALR 689 and 150 ALR 1394.

Scope and import of term "owner" with respect to giving notice of making of public improvement. 95 ALR 1085, 1091.

Duration of lien of special assessment and period of limitation of action for its enforcement as affected by adoption of installment plan of payment. 114 ALR 399.

11-2229. (5247) **Assessments as lien upon property.** Any special assessment made and levied to defray the cost and expense of any of the work enumerated in this act, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien upon and against the property upon which such assessment is made and levied, from and after the date of the passage of the resolution levying such assessment, which lien can only be extinguished by payment of such assessment with all penalties, costs, and interest.

History: En. Sec. 23, Ch. 89, L. 1913; re-en. Sec. 5247, R. C. M. 1921.

Commencement of Lien

Where the city council had acquired jurisdiction to order a special improvement and levy the assessment to pay for it, the assessment became a lien against the property benefited by it from the date the assessment became due, not affected by the circumstance that plaintiffs had recovered judgments against the city for damages caused by the improvement. Allen v. City of Butte, 55 M 205, 209, 175 P 595.

Construction of Section

Advertising costs are also collectible by reason of this section and section 84-4726, to which section 11-2233 makes reference. (State ex rel. City of Wolf Point v. McFarlan, 78 M 156, 252 P 805). School District No. 1 v. City of Helena, 87 M 300, 287 P 164.

Extinguishment of Lien

Under our statutory provisions with relation to special improvements in cities and towns, any special assessment made and levied to defray the cost and expenses of special improvements constitutes a lien upon all property included in an improvement district, but, under the provisions of section 84-4161, such a lien is extinguished by the issuance of a tax deed on sale of the property for delinquent taxes. (State ex rel. City of Great Falls v. Jefferies, 83 M 111, 270 P 638). Stanley v. Jefferies, 86 M 114, 124, 284 P 134.

Tax Deed Extinguishes Special Improvement Assessments Payable before Its Execution

A general tax lien and a special improvement assessment lien are not of equal rank. Support of government is higher obligation than cost of local improvement. Where a special assessment for city improvement became delinquent on Nov. 30, 1940 and was certified by the city to the county clerk on Dec. 7, 1940 and by the county treasurer entered upon the tax rolls as a lien against the property, a county tax deed issued on Dec. 23, 1940 extinguished the lien for the 1940 installment of the city special improvement assessment, because under section 84-4170 such assessment installment was payable before execution of the tax deed. Instant case not violative of section 11, article III of the constitution. Hartman v. Nimmack, 116 M 392, 395, 154 P 2d 279.

References

Thomas v. City of Missoula, 70 M 478, 483, 226 P 213; State ex rel. Costello v. District Court, 86 M 387, 391, 392, 284 P 128; Thibodo v. United States, 187 F 2d 249, 256; United States v. Christensen, 218 F Supp 722, 726.

Collateral References

Municipal Corporations⇐519 (1).

63 C.J.S. Municipal Corporations § 1564 et seq.

48 Am. Jur. 724, Special or Local Assessments, § 194 et seq.

Priority as between liens for public improvements. 5 ALR 1301 and 99 ALR 1478.

Priorities between lien of general taxes and the lien of special assessments. 65 ALR 1379.

Constitutionality of statute giving priority to lien for public improvements over pre-existing liens. 78 ALR 513.

Duration of lien of special assessment and period of limitation of action for its enforcement as affected by adoption of installment plan of payment. 114 ALR 399.

11-2230. (5248) **Mistakes or misnomers not to invalidate assessment.** When under any of the provisions of this act special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner, or other mistake relating to the ownership thereof, shall affect such assessment, or render it void or voidable.

History: En. Sec. 24, Ch. 89, L. 1913; re-en. Sec. 5248, R. C. M. 1921.

Collateral References

Municipal Corporations⇐480.

63 C.J.S. Municipal Corporations § 1441.

11-2231. (5249) **Form of bonds and warrants.** All costs and expenses incurred in the construction of any improvements specified in this act, in any improvement district, shall be paid for by special improvement district bonds or warrants. Such bonds or warrants shall be drawn in substantially the following form:

District No. .....
United States of America,
State of Montana

Warrant or (Bond No. .....) Dollars $.....

Interest at the rate of ..... per cent per annum, payable annually.

Special improvement district coupon warrant or bond

....., Montana

Issued by the city of ....., Montana.

The treasurer of the city of ....., Montana, will pay to bearer, the sum of ..... dollars as authorized by resolution No. ..... as passed on the ..... day of ....., 19...., creating special improvement district No. ..... for the construction of the improvements and the work performed as authorized by said resolution to be done in said district, and all laws, resolutions, and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the city treasurer of ....., Montana.

This warrant (or bond) bears interest at the rate of ..... per cent per annum from the day of registration of this warrant (or bond), as expressed herein, until the date called for redemption by the city treasurer. The interest on this warrant (or bond) is payable annually on the first day of ..... in each year, unless paid previous thereto, and as expressed by the interest coupons hereto attached, which bear the engraved facsimile signature of the mayor and city clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement district, as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the city at any time there are funds to the credit of said special improvement district fund for the redemption thereof, and in the manner provided for the redemption of the same.

It is hereby certified and recited, that all things required to be done, precedent to the issuance of this warrant (or bond), have been properly done, happened and been performed, in the manner prescribed by the laws of the state of Montana and the resolutions and ordinances of the city of ....., Montana relating to the issuance thereof.

(seal)

Dated at ....., Montana, this ..... day of ....., 19.....

City of ....., Montana.

By: ....., Mayor

....., City Clerk

Registered at the office of the city treasurer of ....., Montana, this ..... day of ....., 19.....

..... City Treasurer.

And the same shall be drawn against the special improvement district fund created for the district, and shall bear interest at a rate not exceeding six (6%) per cent per annum, from the date of registration until called for redemption or paid in full, interest to be payable annually on the first day of January of each year, unless the council prescribes another date. Such warrants (or bonds) shall bear the signatures of the mayor and clerk, and shall bear the corporate seal of the city. They shall be registered in the office of the clerk and treasurer, and if interest coupons be attached thereto, they shall also be so registered and shall bear the signatures of the mayor and clerk. Said bonds shall be in denominations of one hundred ($100) dollars or fractions or multiples thereof, and may be issued in installments, and may extend over a period not to exceed twenty (20) years. Such warrants (or bonds) shall be redeemed by the treasurer when there are funds in the special improvement district fund against which said warrants (or bonds), on presentation of the coupons belonging thereto, and any funds remaining shall be applied to the payment of the principal and the redemption of the warrants (or bonds) in the order of their registration; and provided, further that whenever there are any funds in any special improvement district fund, after paying the interest on such warrants (or bonds) drawn against said fund, the treasurer shall call in for payment outstanding warrants (or bonds), which, together with the interest thereon to the date of redemption, will equal the amount of said fund on that date, which date shall be fixed by the treasurer, who shall give notice by publication once in a newspaper published in the city, or at the option of the treasurer, by written notice to the holder or holders of such warrants (or bonds) if their address be known, of the number of warrants (or bonds) and the date on which payment will be made, which

date shall not be less than ten (10) days after the date of publication or of service of notice, and on which date so fixed, interest shall cease.

History: En. Sec. 25, Ch. 89, L. 1913; amd. Sec. 8, Ch. 142, L. 1915; re-en. Sec. 5249, R. C. M. 1921; amd. Sec. 1, Ch. 23, L. 1937; amd. Sec. 1, Ch. 177, L. 1945; amd. Sec. 5, Ch. 260, L. 1959.

Bonds of Improvement District Not General Obligations

Special improvement district bonds are not a general obligation of the city or town. State ex rel. Truax v. Town of Lima, 121 M 152, 193 P 2d 1008, 1010.

Contracts May Not Exceed Approximate Estimate

The amount of the contract for improvements cannot legally exceed by seven and one-half per cent the "approximate estimate of the cost thereof" as included in the resolution of intention. Koich v. City of Helena, 132 M 194, 315 P 2d 811.

Interest May Be Fixed at Six Per Cent

Under this section, specifying that the rate of interest on special improvement district bonds in cities "shall not exceed six per cent per annum," the city council could properly fix the rate of interest at the rate named, as against the contention that under the above provision it is impossible to fix the rate definitely and that therefore interest could not lawfully be considered a part of the cost of the improvement. Hansen v. City of Havre, 112 M 207, 218, 114 P 2d 1053.

Mandamus To Pay Principal Held Up for Payment of Interest after Maturity

Where court refused mandamus proceedings on the ground that under this section the treasurer was required to first pay all the accrued interest on outstanding bonds before payment of any principal, held, on appeal, that assessments could not provide a fund for payment of interest after maturity of the bonds, and that plaintiff was entitled to payment of the principal of the bond sued upon, but not to interest accrued thereon after maturity. State ex rel. Griffith v. City of Shelby, 107 M 571, 576, 87 P 2d 183.

Misapplication of Fund by Treasurer

The office of city treasurer is a continuing one regardless of the person occupying the office at any particular time; the treasurer is the servant of the city, and where he misapplies trust funds such as for special improvement purposes, the municipality is liable to the warrant holders, and such liability is not lending its credit in violation of section 1, article XIII of the constitution. Blackford v. City of Libby, 103 M 272, 278, 280, 62 P 2d 216.

Not Intended To Include Interest Accrued after Maturity

In view of the speculative and indeterminable item of cost of a prospective special city improvement arising from possible delinquencies in the payment of assessments, the legislature, in providing in this section that before the city treasurer shall pay the principal of bonds issued he must first pay out of the special improvement district fund the interest on all outstanding bonds, could not have intended to include interest accrued on outstanding bonds after maturity. State ex rel. Griffith v. City of Shelby, 107 M 571, 576, 87 P 2d 183.

Statute of Limitations, on Recovery—Trust Rule

The statute of limitations does not begin to run against registered city warrants (or bonds) until the city treasurer calls them for payment, or until the holder has an immediate cause of action. Being a trust fund, under the rule that as between trustee and beneficiary of an express and continuing trust, the statute of limitations does not begin to run until trust is repudiated, and the beneficiary has received notice thereof. Blackford v. City of Libby, 103 M 272, 281, 282, 62 P 2d 216.

Treasurer Not Agent of Warrant Holders

The city treasurer is not the agent of the warrant holders, but is the servant of the city, and the city must answer for the illegal acts of its servants. Special improvement district moneys constitute trust funds, and are in the hands of municipal officials in trust. The municipality is merely a custodian, and its duties relative to such funds are purely ministerial. It may not use or divert them. Blackford v. City of Libby, 103 M 272, 278, 62 P 2d 216.

Where Action Held Maintainable To Recover on Warrants Paid Out of Order by County Treasurer

While the rule as to a city's liability to warrant holders damaged by reason of their warrants being paid out of order does not generally apply to county warrants, held, that where the county commissioners created a special improvement district within an unincorporated town for the installation of waterworks, the county assumed the same duties as rest upon incorporated cities and towns, and therefore were properly held liable for damage sustained by a holder of warrants not paid in the order of registration where the special fund became exhausted, and holder could presume treasurer would do his duty by calling and giving notice. Witter v. Phillips County, 111 M 352, 355, 109 P 2d 56.

References

State ex rel. Clark v. Bailey, 99 M 484, 44 P 2d 740.

Collateral References

Municipal Corporations⇨896 et seq., 923 et seq.

64 C.J.S. Municipal Corporations §§ 1892, 1935 et seq.

11-2232. (5250) **Payments under contracts.** The city or town council shall provide for making payments for improvements in any special improvement district by the following method:

The city or town council shall sell bonds or warrants issued under the provisions hereof, in an amount sufficient to pay that part of the total cost and expense of making the improvement which is to be assessed against the property within the district, to the highest and best bidder therefor for cash, for not less than the face value of such bonds, or warrants, and including interest thereon, and shall use the proceeds of such sale in making payment to the contractor, or contractors, and such payment may be made either, from time to time, on estimates made by the engineer in charge of such improvements for the city or town, or upon the entire completion of the improvements and the acceptance thereof by the city or town council. The provisions of sections 11-2313, 11-2314 and 11-2315 with regard to the notice of sale, publication of notice and manner and method of selling bonds by cities and towns, in so far as the same are applicable thereto and not in conflict with the provisions of this section, shall apply to, govern and control the form of notice of sale, publication of notice and manner and method of selling such bonds or warrants.

History: En. Sec. 26, Ch. 89, L. 1913; re-en. Sec. 5250, R. C. M. 1921; amd. Sec. 1, Ch. 46, L. 1927; amd. Sec. 1, Ch. 178, L. 1945.

Contracts May Not Exceed Approximate Estimate

The amount of the contract for improvements cannot legally exceed by seven and one-half per cent the "approximate estimate of the cost thereof" as included in the resolution of intention. Koich v. City of Helena, 132 M 194, 315 P 2d 811.

Issuance of Bonds at Discount

City council has no power to issue bonds or warrants at a discount in payment of special improvement work, and a contract let to one who in making out his bid took into consideration the fact that the warrants he would receive were worth only ninety cents on the dollar, and therefore added ten per cent to the actual cost, was invalid as an attempt to do indirectly what the council was prohibited from doing directly. Evans v. City of Helena, 60 M 577, 588, 199 P 445.

Collateral References

Municipal Corporations⇨370, 897, 911.

63 C.J.S. Municipal Corporations § 1203 et seq.; 64 C.J.S. Municipal Corporations §§ 1892, 1907 et seq.

11-2233. (5251) **Collection of city taxes and assessments by county treasurer—certification.** It shall be the duty of city or town treasurer of every city or town whose taxes for general, municipal and administrative purposes are certified to and collected by the county treasurer in accordance with the provisions of section 84-4729 immediately after the second Monday of August of each year and at the same time the copy of the resolution determining the annual levy for general taxes is certified by the city or town clerk to the county clerk as required by said section 84-4729, to certify to the county assessor of the county in which such city or town is situated, all special assessments and taxes levied and assessed in accordance with any of the provisions of this act. The county assessor shall thereupon enter same upon the assessment roll of the county. The county

treasurer must collect all such taxes and assessments in the same manner and at the same time as said taxes for general, municipal and administrative purposes are collected by him.

History: En. Sec. 27, Ch. 89, L. 1913; amd. Sec. 1, Ch. 166, L. 1921; re-en. Sec. 5251, R. C. M. 1921; amd. Sec. 1, Ch. 156, L. 1925; amd. Sec. 1, Ch. 78, L. 1929; amd. Sec. 1, Ch. 13, L. 1945.

Collection by City Treasurer

Assessments for special city improvements which under this section the county treasurer is required to collect, held to fall within the meaning of the words "tax" and "taxes" as employed in section 84-4726, making it the duty of the county treasurer to collect city taxes where a city has not imposed that duty upon its own treasurer. State ex rel. City of Wolf Point v. McFarlan, 78 M 156, 161, 252 P 805.

References

Gagnon v. City of Butte, 75 M 279, 287, 243 P 1085; State ex rel. City of Great Falls v. Jeffries, 83 M 111, 114, 270 P 638; School District No. 1 v. City of Helena, 87 M 300, 307, 287 P 164; State ex rel. Clark v. Bailey, 99 M 484, 44 P 2d 740.

Collateral References

Municipal Corporations⇨528.
63 C.J.S. Municipal Corporations § 1583.
48 Am. Jur. 731, Special or Local Assessments, § 204 et seq.

11-2234. (5251.1) **City treasurer to collect special assessments, when.** In every city or town which shall provide by ordinance for the collection of its taxes for general, municipal and administrative purposes by its city or town treasurer, such city or town treasurer shall collect all special assessments and taxes levied and assessed in accordance with any of the provisions of this act, in the same manner and at the same time as said taxes for general, municipal and administrative purposes are collected by him; and all of the provisions of section 84-4727 of this code, shall apply to the collection of such special taxes and assessments in the same manner as such provisions apply to the collection of other city or town taxes. When one payment becomes delinquent all payments shall, at the option of the city or town council, by appropriate resolutions duly adopted become delinquent, and the whole property shall be sold the same as other property is sold for taxes.

History: En. Sec. 27, Ch. 89, L. 1913; amd. Sec. 1, Ch. 166, L. 1921; re-en. Sec. 5251, R. C. M. 1921; amd. Sec. 1, Ch. 156, L. 1925; amd. Sec. 1, Ch. 78, L. 1929.

References

State ex rel. Freebourn v. Yellowstone County, 108 M 21, 28, 88 P 2d 6.

Collateral References

Municipal Corporations⇨530, 548.
63 C.J.S. Municipal Corporations § 1585.

Power of municipality to transfer or assign its right to enforce assessment or lien for local improvements. 55 ALR 667.

Prior judgment as precluding reassessment for public improvement. 60 ALR 513.

Enforcement of assessment by sale of railroad right of way. 82 ALR 425, 431.

Power and duty to include in a periodical special assessment the amount of a deficiency for a previous period resulting from delinquent assessments which may eventually be paid. 96 ALR 1275.

Forfeiture or sale of land to state or political subdivision for nonpayment of taxes as suspending right to enforce special assessment or improvement lien or running of limitation in that regard. 113 ALR 920.

Duration of lien of special assessment and period of limitation of action for its enforcement as affected by adoption of installment plan of payment. 114 ALR 399.

Personal liability of property owner to pay assessments for local improvements. 127 ALR 551 and 167 ALR 1030.

When statute of limitation commences to run in actions to recover taxes because of omission of property from tax list. 131 ALR 822, 824.

Right of mortgagor or purchaser of equity of redemption to defeat lien of mortgage by acquisition of title at sale subsequent to mortgage for nonpayment of assessment for local improvement. 134 ALR 289.

Applicability of statute of limitations to action to enforce special assessments as

affected by question whether imposition or enforcement of the assessment is an exercise of a governmental function. 136 ALR 572.

11-2235. (5251.2) **City treasurer may collect special assessments, when.** Any city or town whose taxes for general, municipal and administrative purposes are certified to and collected by the county treasurer, in accordance with the provisions of sections 84-4729 and 84-4727 may, nevertheless, provide by ordinance for the collection by its city or town treasurer of all special assessments and taxes levied and assessed in accordance with any of the provisions of this act in the same manner and at the same time as said taxes for general, municipal and administrative purposes are collected by the county treasurer and all of the provisions of section 84-4727 shall apply to the collection of such special taxes and assessments in the same manner as such provisions apply to the collection of other city or town taxes. When the payment of any one installment of any special assessment becomes delinquent, all payments of subsequent installments shall, at the option of the city or town council, by appropriate resolution, duly adopted, become delinquent, and such delinquent special assessments shall be certified to the county clerk of the county in which such city or town is situated, and the county treasurer must collect such delinquent special assessments and taxes in the same manner and at the same time as said taxes for general, municipal and administrative purposes are collected by him, and in case the same are not paid, the whole property shall be sold, the same as other property is sold for taxes.

History: En. Subd. (c), Sec. 5251, R. C. M. 1921 by Sec. 1, Ch. 78, L. 1929. See history of section 11-2233.

11-2236. (5251.3) **Special assessments, when payable.** All special assessments, or installments of special assessments in cities and towns, duly and regularly levied by resolution, according to law, shall be payable on or before 6 o'clock p. m. on the 30th day of November of each year, and in event the same are not paid on or before said date, the same shall be subject to the same interest and penalties for nonpayment as are or may hereafter be provided by the laws of the state of Montana for other delinquent taxes.

History: En. Subd. (d), Sec. 5251, R. C. M. 1921 by Sec. 1, Ch. 78, L. 1929. See history of section 11-2233.

Collateral References

Municipal Corporations⇐518 (1), 524.

63 C.J.S. Municipal Corporations §§ 1578, 1579.

11-2237. (5251.4) **Delinquent assessments may be reinstated.** When any special assessment, or installment, or installments of special assessments, have become delinquent, and are so declared by appropriate resolution by the city or town council, and have been certified to the county clerk and county treasurer for collection, as herein provided, the city or town council may, nevertheless, at its option, upon the payment to the city treasurer of the assessment, or the installment or installments of special assessments, and interest, up to date, by appropriate resolution, be withdrawn from the county treasurer, and canceled from his records and proceedings, and reinstated in the office of the city treasurer and on the assessment book thereof. Said withdrawal and reinstatement may be had

and made at any time before or after sale of the property for delinquent taxes, and before tax deed therefor has been executed, the certified copy of the resolution of the city or town council with reference to such payment, withdrawal and reinstatement filed with the county treasurer shall be authority to and for the county treasurer to cancel and withdraw said delinquent special assessments or any installments thereof.

History: En. Subd. (e), Sec. 5251, R. C. M. 1921 by Sec. 1, Ch. 78. L. 1929. See history of section 11-2233.

Collateral References

Municipal Corporations⇐522.
63 C.J.S. Municipal Corporations § 1573.

11-2238. (5252) **Correction of assessment—collection upon relevy of tax.** Whenever, by reason of any alleged nonconformity to any law or ordinance, or by reason of any omission or irregularity, any special tax or assessment is either invalid or its validity is questioned, the council may make all necessary orders and ordinances, and may take all necessary steps to correct the same and to reassess and relevy the same, including the ordering of work, with the same force and effect as if made at the time provided by law, ordinance, or resolution relating thereto; and may reassess and relevy the same with the same force and effect as an original levy; whenever any apportionment or assessment is made, and any property is assessed too little or too much, the same may be corrected and reassessed for such additional amount as may be proper, or the assessment may be reduced even to the extent of refunding the tax collected. Any special tax upon reassessment or relevy shall, so far as is practicable, be levied and collected as the same would have been if the first levy had been enforced; and any provisions of any law or ordinance specifying a time when, or order in which acts shall be done in a proceeding which may result in a special tax, shall be taken to be subject to the qualifications of this act. Any and every ordinance, or part thereof, of any council, heretofore passed in substantial conformity with this section, is hereby legalized.

History: En. Sec. 28, Ch. 89, L. 1913; re-en. Sec. 5252, R. C. M. 1921.

Construction of Section

This section does not authorize the reassessment of any of the property in a special improvement district to make up for delinquent assessments against other property. Its provisions have to do with the correction of invalid or erroneous assessment by reassessment. A reassessment cannot be made unless authorized by statute, and then only in the manner provided. School District No. 1, v. City of Helena, 87 M 300, 312, 287 P 164.

Reassessments

This section does not authorize reassessments to make up for delinquent assessments. State ex rel. Truax v. Town of Lima, 121 M 152, 193 P 2d 1008, 1013.

Collateral References

Municipal Corporations⇐514 (1), (2).
63 C.J.S. Municipal Corporations § 1541 et seq.

Prior judgment as precluding reassessment for public improvement. 60 ALR 513.

Statute authorizing or requiring reassessment for public improvement when original assessment is invalid or void as applicable when proceedings leading to original assessment were without jurisdiction. 83 ALR 1190.

11-2239. (5253) **Payment of tax under protest—action to recover.** When any tax levied and assessed under any of the provisions of this act is deemed unlawful by the party whose property is thus taxed, or from whom such tax is demanded, such person may pay such tax or any part thereof deemed unlawful under protest, to the city or county treasurer, as the case may be, and thereupon such party so paying, or his legal represent-

ative, may bring an action in any court of competent jurisdiction against the officer to whom such tax was paid, or against the city in whose behalf the same was collected, to recover such tax or any portion thereof, so paid under protest; provided, however, that any action instituted to recover any tax paid under protest must be commenced within sixty days after the date of payment thereof. The tax so paid under protest shall be held by the city or county treasurer, as the case may be, until the determination of any action brought for the recovery thereof.

History: En. Sec. 29, Ch. 89, L. 1913; re-en. Sec. 5253, R. C. M. 1921.

Recovery of Tax Paid under Protest

Plaintiff, in an action to recover back a special improvement tax paid under protest, need not allege in the complaint that his claim had been presented to the city or town council for allowance before action was commenced, this section not contemplating presentation thereof as a condition precedent to his right to maintain the action. Harvey v. Town of Townsend, 57 M 407, 188 P 897.

Collateral References

Municipal Corporations⇐523 (4), (5).

63 C.J.S. Municipal Corporations § 1575 et seq.

48 Am. Jur. 764, Special or Local Assessments, § 261 et seq.

11-2240. (5254) **Mistake in name or description not fatal.** Any mistake in the description of the property or the name of the owner shall not vitiate any liens created by this act, unless it is impossible to identify the property from the description.

History: En. Sec. 30, Ch. 89, L. 1913; re-en. Sec. 5254, R. C. M. 1921.

Collateral References

Municipal Corporations⇐479, 480.

63 C.J.S. Municipal Corporations § 1439 et seq.

11-2241. (5255) **Owner of property—definition of terms—publication of notice.** (1) The person owning the fee, or the person in whom, on the day the action is commenced, appears the legal title to the lot and lands, by deeds duly recorded in the county recorder's office in each county, or the person in possession of lands, lots, or portions of lots, or buildings under claim, or exercising acts of ownership over the same for himself, or as the executor, administrator, or guardian of the owner, shall be regarded, treated, and deemed to be the "owner" for the purpose of this act, according to the intent and meaning of that word as used in this act. And in case of property leased, the possession of the tenant or lessee holding and occupying under such persons shall be deemed to be the possession of such owner.

(2) The words "work," "improved," and "improvement," as used in this act, shall include all work or the securing of property mentioned in this act, and also the construction, reconstruction, and repairs, of all or any portion of said work.

(3) The term "incidental expenses," as used in this act, shall include the compensation of the city engineer for work done by him; also the cost of printing and advertising, as provided in this act; also, the compensation of the persons appointed by the city engineer to take charge of and superintend any of the work mentioned in this act; also the expenses of making the assessment for any work authorized by this act. All demands for incidental expenses mentioned in this subdivision shall be presented to the city clerk by itemized bill, duly verified by oath of the demandant.

(4) The notices, resolutions, orders, or other matter required to be published by the provisions of this act, shall be published in a daily newspaper or in a semiweekly or weekly newspaper, to be designated by the council of such city, as often as the same is issued during the period specified for said publication, and no other statute shall govern or be applicable to the publications herein provided for; provided, however, that in case there is no daily, semiweekly, or weekly newspaper printed or circulated in any such city, then such notices, resolutions, orders, or other matters as are herein required to be published in a newspaper, shall be posted and kept posted for the same length of time as required herein for the publication of the same in a daily, semiweekly, or weekly newspaper, in three of the most public places in such city except herein otherwise specifically provided. Proof of the publication or posting of any notice provided for herein shall be made by affidavit of the owner, publisher, printer, or clerk of the newspaper, or of the poster of the notice. No publication or notice, other than that provided for in this act, shall be necessary to give validity to any of the proceedings provided for therein. The word "twice," as used in this act, referring to the number of times notices, resolutions, or other matters shall be published, shall be held to mean the publication of the same in two entire issues of a newspaper, one being on one day and the other issue being on a subsequent day of the same or a subsequent week.

(5) The word "municipality" and the word "city," as used in this act, shall be understood and so construed as to include, and are hereby declared to include, all corporations heretofore organized and now existing, and those hereafter organized for municipal purposes.

(6) The words "paved" or "repaved," as used in this act, shall be held to mean and include pavement of stone, whether paving blocks or macadam, or of bituminous rock or asphalt, or of wood, brick, or other material, whether patented or not, which the city council shall by ordinance or resolution adopt.

(7) The word "street," as used in this act, shall be deemed to, and is hereby declared to, include avenues, highways, lanes, alleys, crossings, or intersections, courts, and places, which have been dedicated and accepted according to the law, or in common and undisputed use by the public for a period of not less than five years next preceding, and the term "main street" means such actually opened street or streets as bound a block; and the word "blocks," whether regular or irregular, shall mean such blocks as are bounded by main streets, or partially by a boundary line of the city.

(8) The term "city engineer," as used in this act, shall be understood and so construed as to include, and is hereby declared to include, any person or officer whose duty it is, under the law, to have the care or charge of the streets, or the improvement thereof in any city. In all those cities where there is no city engineer, the city council thereof is hereby authorized and empowered to appoint a suitable person to discharge the duties herein laid down as those of the city engineer, and all provisions hereof applicable to the city engineer shall apply to such person so appointed.

(9) The term "city council" is hereby declared to include any body or board which under the law is the legislative department of the government of the city.

(10) In municipalities in which there is no mayor, then the duties imposed upon said officer by the provisions of this act shall be performed by the president of the council or other chief executive officer of the municipality.

(11) The terms "clerk" and "city clerk," as used in this act, are hereby declared to include any person or officer who shall be clerk of the said council.

(12) The term "quarter-block," as used in this act, as to irregular blocks, shall be deemed to include all lots or portions of lots having any frontage on either intersecting street halfway from such intersection to the next main street, or, when no main street intervenes, all the way to a boundary line of the city.

(13) The term "city treasurer," as used in this act, shall be held to mean and include any person who, under whatever name or title, is the custodian of the funds of the municipality.

(14) The term "street intersection," wherever used in this act, shall be held to mean that parcel of land at the point of juncture or crossing of intersecting streets which lies between lines drawn from corner to corner of all lot lines immediately cornering at such juncture.

History: En. Sec. 31, Ch. 89, L. 1913; re-en. Sec. 5255, R. C. M. 1921.

Notice Must Be Published Rather than Posted if Possible

The obvious intent of the legislature as declared by subsection (4) of this section was to permit posting of notice only when publication could not be made in the city, and whenever there is a newspaper published in the city, whether "daily," "semiweekly" or "weekly," publication therein should take precedence over notice by posting. Hansen v. City of Havre, 112 M 207, 213, 114 P 2d 1053.

Publication each day from Tuesday through Saturday, inclusive, in a paper published only five days in the week was sufficient to meet the requirements of this section and section 11-2204. Hansen v. City of Havre, 112 M 207, 213, 114 P 2d 1053.

Publication of Notice

Landowners who appear before the city council to protest the establishment of an improvement district do not thereby waive their right to restrain its establishment on the ground of failure to publish notice in successive issues of a newspaper. Guffey v. City of Helena, 140 M 211, 369 P 2d 803, 806.

Collateral References

Municipal Corporations⇐265 et seq.

63 C.J.S. Municipal Corporations § 1036 et seq.

48 Am. Jur. 693, Special or Local Assessments, § 151 et seq.

Scope and import of term "owner" with respect to giving notice of making of public improvement. 95 ALR 1085, 1091.

11-2242. (5256) **Adjournment of hearing by council.** Whenever, in proceedings hereunder, a time and place for hearing by the city council are fixed, and, from any cause, the hearing is not then and there held or regularly adjourned to a time and place fixed, the power or jurisdiction of the city council in the premises shall not thereby be divested or lost, but the city council may proceed anew to fix a time and place for the hearing, and cause notice thereof to be given by publication by at least one insertion in a daily, semiweekly, or weekly newspaper, such publication to be at least five days before the date of the hearing, and thereupon the city council shall have power to act as in the first instance.

History: En. Sec. 32, Ch. 89, L. 1913; re-en. Sec. 5256, R. C. M. 1921.

Collateral References

Municipal Corporations⇐298, 402 (5), 455, 491.

63 C.J.S. Municipal Corporations §§ 1102, 1270, 1399, 1478.

11-2243. (5257) **Posting and publication of notices by clerk—effect of errors in proceedings.** Whenever any resolution, order, notice, or determination is required to be published or posted, and the duty of posting or procuring the publication or posting of the same is not specifically enjoined upon any officer of the city, it shall be the duty of the city clerk to post or procure the publication or posting thereof, as the case may be. No proceeding or step herein shall be invalidated or affected by any error or mistake or departure herefrom as to the officer or person posting or procuring the publication or posting of any resolution, notice, order, or determination hereunder, when the same is actually published or posted for the time herein required.

History: En. Sec. 34, Ch. 89, L. 1913; re-en. Sec. 5257, R. C. M. 1921.

Error in Publication of Notice

Under this section any error in or departure from the mode of publication of any notice incident to the creation of a special improvement district is insufficient to invalidate the proceedings, when it appears that the notice was actually published for the time required by the act. Aiken v. City of Glendive, 60 M 1, 2, 197 P 1003.

Collateral References

Municipal Corporations⇐169, 294 (8) et seq.

62 C.J.S. Municipal Corporations § 544; 63 C.J.S. Municipal Corporations § 1094 et seq.

11-2244. (5258) **Curative section concerning special improvements.** All special improvement districts which any city or town council in the state of Montana has created or attempted to create since March 14, 1913, pursuant to the provisions of chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana, the creation or attempted creation of which was irregular because of the failure of any such city or town council, so creating or attempting to create the same, to proceed in the creation of any such districts, or in giving notice thereof, in the manner required by chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana; and any and all bonds and warrants issued or to be issued to defray the cost and expense incurred, or to be incurred in the construction of the improvements made or to be made in any such districts, and the assessments levied or to be levied in any such districts, are hereby legalized and validated, and the acts and proceedings of the city or town council of any such city or town done or had with reference thereto are hereby made of as binding force and effect, as though they were done and had in strict conformity with the provisions of said chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana; provided, however, that a resolution of intention to create, or a resolution creating or attempting to create any such district, was duly and properly passed and adopted by the city or town council of any such city or town, and approved by the mayor thereof, prior to giving notice thereof; and provided, further, that notice of the passage of such resolution of intention to create, or resolution creating or attempting to create any such district, or notice of the creation or intention to create or attempted

creation of any such district, and of the time and place when and where the city or town council of any such city or town would hear and pass upon all protests made by any owner of property in any such district liable to be assessed for the work done or proposed to be done therein, against the making of such improvement, or the creation of any such district, and describing the general character of the improvements proposed to be made, the estimated cost thereof, and referring to the resolution on file in the office of the city or town clerk of any such city or town, for the description of the boundaries of any such district, was published for five days in a daily newspaper, or in some one issue of a weekly paper published in any such city or town, or in case no newspaper was published in any such city or town, at the time such notice was given, then, provided, it was posted for five days in three public places in such city or town; and provided, further, that a copy of such notice so published or posted was mailed to every person, firm, or corporation, or to the agent of every person, firm, or corporation, having property within any such district, at his last known address, upon the same day such notice was first published or posted; and provided, further, that said notice was published or posted and mailed on a day not less than fifteen days prior to the date set for hearing and passing upon all protests made in any such district; and provided, further, that at the next regular meeting of the city or town council of any such city or town after the expiration of said fifteen days, the city or town council of any such city or town, proceeded to hear and pass upon, and did hear and pass upon all protests made in any such district; and provided, further, that no sufficient protests were made in any such district to prevent further proceedings therein, as provided in chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana; and provided, further, that the resolutions, ordinances, notices, acts, and proceedings required to be passed, adopted, approved, given, done, and had by the provisions of chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana for the letting of any contract for the construction of any improvements in any such district, and the resolutions, ordinances, notices, acts, and proceedings required to be passed, adopted, approved, given, done, and had by said chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana, for the issuance and delivery or sale of any bonds or warrants of any such district were or shall be duly and regularly passed, adopted, approved, given, done, and had in conformity with the provisions of said chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana, and the laws of the state of Montana relating thereto; and provided, further, that the assessment to defray the cost of making the improvements in any such district was or shall be duly and regularly passed, adopted, and approved, and notice thereof duly and regularly given, and a copy of the resolution levying any such assessment, certified to by the city or town clerk, delivered to the city or town treasurer of any such city or town, within two days after its final passage, as required by the provisions of said chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana; and provided, further, that the sum levied and assessed, or to be levied and assessed, against the property of any such district did not or

shall not exceed the cost and expense of making the improvements therein; and provided, further, that the improvements made or to be made in any such district are improvements which a city or town can legally make under the provisions of said chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana; and provided, further, that nothing herein contained shall be deemed to affect or disturb rights acquired under any judicial decision made in any cause involving the procedure of any special improvement district created or attempted to be created under the provisions of chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana.

History: En. Sec. 9, Ch. 142, L. 1915; re-en. Sec. 5258, R. C. M. 1921.

NOTE.—Chapter 89 of the acts of the thirteenth legislative assembly, referred to in this section, is compiled as sections 11-2201, 11-2202, 11-2204 to 11-2214, 11-2216, 11-2222 to 11-2233, 11-2238 to 11-2243.

Construction of Section

Defects in the proceedings necessary to confer jurisdiction upon the city council to create a special improvement district, such as in the passage of a resolution of intention, giving notice of its passage, etc., are not cured by the provisions of this section. Cooper v. City of Bozeman, 54 M 277, 285, 169 P 801.

References

Hinzeman v. City of Deer Lodge, 58 M 369, 374, 193 P 395.

Collateral References

Municipal Corporations⇨515 (1).

62 C.J.S. Municipal Corporations § 410 (1).

11-2245. (5259) **Special improvement districts for lighting streets—apportionment of cost.** The city or town council of any city or town is authorized to create special improvement districts embracing any street or streets or public highway therein, or portions thereof, and property adjacent thereto, or property which may be declared by said council to be benefited by the improvement to be made, for the purpose of lighting such street or streets or public highway, and to require not more than three-fourths (¾) and not less than one-fourth (¼) of the cost of installing and maintaining such lighting system to be paid by the owners of the property embraced within the boundaries of such districts, and to assess and collect such portion of such cost by special assessment against said property.

History: En. Sec. 1, Ch. 143, L. 1915; re-en. Sec. 5259, R. C. M. 1921; amd. Sec. 1, Ch. 143, L. 1927.

NOTE.—Chapter 98, Laws of 1911, an act regulating the creation of lighting districts, was repealed by chapter 143, Laws of 1915, which is here given.

Electric Lighting System

An improvement district may be created for the purpose of maintaining a system owned by a corporation or individual and the furnishing of electrical current therefor. Marchi v. Brackman, 130 M 228, 299 P 2d 761, 764. (Concurring and dissenting opinion, 130 M 228, 299 P 2d 761, 767.)

A special improvement district created under this section for the purpose of lighting the streets included within its boundaries may not be utilized to require the payment of maintenance costs, which in truth and in fact are not the cost of maintenance at all, but are rather designed to reimburse the power company for its own costs incurred in installing its own lighting system. Marchi v. Brackman, 130 M 228, 299 P 2d 761, 766. (Dissenting opinion, 130 M 228, 299 P 2d 761, 767.)

References

Helena Light & Ry. Co. v. City of Helena, 47 M 18, 34, 130 P 446; School District No. 1 v. City of Helena, 87 M 300, 308, 287 P 164.

Collateral References

Municipal Corporations⇨272, 450 (1).

63 C.J.S. Municipal Corporations §§ 1052, 1359 et seq.

48 Am. Jur. 610, Special or Local Assessments, §§ 57-76.

Power to impose cost of maintenance or operation of street lighting system on local improvement district. 60 ALR 272.

Liability of municipal corporation for injury or death occurring from defects in, or negligence in construction, operation, or maintenance of its electric street-lighting equipment, apparatus, and the like. 19 ALR 2d 344.

11-2246. (5260) **Apportionment of costs—assessments.** The portion of the entire cost of erecting and maintaining the posts, wires, pipes, conduits, lamps and other suitable or necessary appliances for the purpose of lighting said streets or public highways and of the annual cost of supplying electrical current for and maintaining the lights thereon in such districts, not less than one-fourth (¼) nor more than three-fourths, (¾) as shall be determined by the city or town council, shall be borne by the property embraced within said district, and the city or town council for the purpose of making the assessment shall adopt one of the two (2) following methods:

(a) The city council shall assess the entire cost of such improvement against the entire district, each lot or parcel of land within such district to be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys and public places; provided, however, that the city council, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue or alley intersection out of any funds in its hands, available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district. In order to apportion the cost of any of the improvements herein provided for between the corner lot and the inside lots of any block, the council may, in the resolution creating any district, provide that whenever any of the improvements herein provided for shall be along any side street, or bordering or abutting upon the side of any corner lot of any block, that the amount of the assessment against the property in such district, to defray the cost of such improvements, shall be so assessed that each square foot of the land, embraced within any such corner lot, shall bear double the amount of the cost of such improvement that a square foot of any inside lot shall bear.

(b) The city council shall assess the cost of such improvements against the entire district, each lot or parcel of land within such district bordering or abutting upon the street or streets whereon or wherein the improvement has been made, in proportion to the lineal feet abutting or bordering the same; provided, however, that the city council, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue or alley intersection, out of any funds in its hands, available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the districts.

History: En. Sec. 2, Ch. 143, L. 1915; re-en. Sec. 5260, R. C. M. 1921; amd. Sec. 2, Ch. 143, L. 1927.

References

School District No. 1 v. City of Helena, 87 M 300, 308, 287 P 164.

Collateral References

Municipal Corporations⇐468, 469 (1).
63 C.J.S. Municipal Corporations §§ 1426, 1427 et seq.

11-2247. (5261) **Resolution of intention—notice—protest—hearings—installation of system.** (1) Before creating any special improvement lighting district in any such city or town, for the purpose of lighting any street or streets or public highway, or section thereof, in accordance with the provisions of this act, the city council shall pass a resolution of intention so to do, which resolution shall designate the number of such district, describe the boundaries thereof, and state therein the general character of the improvement or improvements to be made and an approximate estimate of the cost thereof; also an approximate estimate of the cost of maintaining such lights and supplying electrical current therefor for the first (1st) year, and the proportion of such cost to be assessed against the property embraced within the district.

(2) Upon having passed such resolution, the council must give notice of the passage of such resolution of intention, which notice of the passage of such resolution must be published for five (5) days in a daily newspaper or in some one issue of a weekly newspaper in the city or town, or in case no newspaper be published in such city or town, then by posting for five (5) days in three (3) public places in the city or town, and a copy of such notice shall be mailed to every person, firm or corporation having property within the proposed district, at his last known address, upon the same day such notice is first published or posted. Such notice must describe the general character of the improvement so proposed to be made and state the estimated cost thereof; also the estimated cost of maintaining the lights and supplying the electrical current therefor within such district for the first (1st) year, and designate the time when and the place where the council will hear and pass upon all protests that may be made against the making of such improvement or the creation of such district, and such notice shall refer to the resolution on file in the office of the city clerk for a description of the boundaries.

(3) At any time within fifteen (15) days after the date of the first publication of the notice of passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work or against the extent or creation of the district to be assessed or both. Such notice must be in writing and be delivered to the said clerk of the city council, who shall endorse thereon the date of its receipt by him.

(4) At the next regular meeting of the city council, after the expiration of the time within which said protests may be so made, the city council shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, that when the protest is against the proposed work and the cost thereof is to be assessed upon property embraced within the boundaries of the district, and if the city council finds that such protest is made by the owners of a majority of the property embraced within the district to be assessed for the proposed work, no further proceedings shall be taken for a period of six (6) months from the date when said protest was received by the said city clerk of said city council.

(5) In determining whether or not sufficient protest has been filed in a proposed district to prevent further proceedings therein, property owned

by a county, city or town shall be considered the same as other property in the district. The city council may adjourn said hearing from time to time.

(6) When no protests have been delivered to the clerk of the city council within fifteen (15) days after the date of the first publication of the notice of the passage of the resolution of intention, or when a protest shall have been found by the city council to be insufficient or shall have been overruled, or when a protest against the extent of the proposed district shall have been heard and denied, immediately thereupon the city council shall be deemed to have acquired jurisdiction to order the proposed improvements; but before ordering any of said proposed improvements, the city council shall pass a resolution creating the special improvement lighting district in accordance with the resolution of intention theretofore introduced and passed by the city council.

(7) The city or town council may cause the posts, wires, pipes, conduits, lamps or other suitable and necessary appliances, for the purpose of lighting said streets, to be procured and erected by contract or by the street commissioner, or by any other official of the city or town, in such way and manner as the council shall provide, and after such lighting system has been installed, may, by contract, in such way and manner as the council shall elect, cause the lights to be maintained thereon and electrical current furnished therefor; provided that the posts in any such district shall be of uniform size and character and shall be distributed uniformly upon the street or streets or public highways, or section thereof, to be lighted in any such district.

History: En. Sec. 3, Ch. 143, L. 1915; re-en. Sec. 5261, R. C. M. 1921; amd. Sec. 3, Ch. 143, L. 1927.

References

School District No. 1 v. City of Helena, 87 M 300, 308, 287 P 164; Marchi v. Brackman, 130 M 228, 299 P 2d 761, 765.

Collateral References

Municipal Corporations⇐293 (1) et seq.
63 C.J.S. Municipal Corporations § 1093 et seq.

11-2248. (5262) **Objections to irregular proceedings.** At any time within sixty days from the date of the award of any contract by a city or town council under the provisions of this act, or at any time within sixty days from the date, the city or town council requires or instructs the street commissioner, or any other official of the city or town, to cause the posts, wires, pipes, conduits, lamps, or other suitable and necessary appliances for the purpose of lighting said streets of said city or towns, to be procured and erected, any owner or other person having any interest in any lot or land liable to assessment, who claims that any of the previous acts or proceedings relating to said improvements are irregular, defective, erroneous or faulty, or that his property will be damaged by the making of any improvements in the manner contemplated, may file with the city clerk, who shall deliver the same to the city or town council, a written notice specifying in what respect said acts or proceedings are irregular, defective, erroneous, or faulty, or in what manner and to what extent his property will be damaged by the making of said improvements. All objections to any act or proceeding, or in relation to the making of said im-

provements not made in writing and in the manner at the time aforesaid, and all claims for damage therefor, shall be waived by such property owners; provided, the notice of the passage of the resolution of intention has been actually published, and the notices of improvements posted as provided in this act.

History: En. Sec. 3(a), Ch. 243, L. 1921; re-en. Sec. 5262, R. C. M. 1921.

Collateral References

Municipal Corporations⇐316, 318, 488 (1).

63 C.J.S. Municipal Corporations §§ 1130, 1474.

11-2249. (5263) **Bonds and warrants — interest — redemption.** All cost and expenses incurred in the construction of the improvement specified in this act shall be paid for by special improvement lighting district bonds or warrants, in such form as may be prescribed by ordinance drawn against a fund to be known as "Special Improvement Lighting District No.....Fund." Said warrants or bonds shall be in the denomination of one hundred dollars or fractions or multiples thereof; and may be issued in installments. Such warrants or bonds shall be redeemed by the treasurer when there is money in the fund against which said warrants or bonds are issued available therefor, and may extend over a period not to exceed eight years, and shall bear interest at a rate not exceeding six per cent (6%) per annum from the date of registration thereof, until called for redemption or paid in full, interest to be payable annually on the first day of January of each year as expressed by the interest coupon attached thereto, which may bear the engraved facsimile signature of the mayor and city clerk. The requirements of this section shall apply to all special improvement lighting districts, including those now in the process of formation or to be formed hereafter.

History: En. Sec. 4, Ch. 143, L. 1915; re-en. Sec. 5263, R. C. M. 1921; amd. Sec. 1, Ch. 55, L. 1947.

References

Marchi v. Brackman, 130 M 228, 299 P 2d 761, 764.

Collateral References

Municipal Corporations⇐896 et seq., 911, 923 et seq.

64 C.J.S. Municipal Corporations §§ 1892, 1905 et seq., 1935 et seq.

11-2250. (5264) **Preparatory expense—accounts by engineer.** The cost and expense connected with and incidental to the formation of any such district, including the cost of preparation of plans, specifications, maps, plats, engineering, superintendence, and inspection, including the compensation of the city engineer for work done by him, and the cost of printing and advertising as provided in this act, and the preparation of assessment rolls, shall be considered a part of the cost and expenses of making the improvements within such special improvement district; and it shall be the duty of the city engineer to keep an account of all costs and expenses incurred in his office in connection with every special improvement district, and certify the same to the city clerk, whose duty it shall be to prepare all necessary schedules and resolutions levying taxes and assessments in such special improvement districts.

History: En. Sec. 5, Ch. 143, L. 1915; re-en. Sec. 5264, R. C. M. 1921.

Collateral References
Municipal Corporations⊂⇒460.
63 C.J.S. Municipal Corporations § 1411 et seq.

11-2251. (5265) **Assessing cost of system—resolution — hearings — funds.** It shall be the duty of the city or town council to ascertain the cost of installing such lighting system, and on or before the first Monday in October pass and finally adopt a resolution levying and assessing all of the property embraced within said district with not less than one-fourth (¼) nor more than three-fourths (¾) of the entire cost of installing the same; each lot or parcel of land in said district to be assessed in accordance with the method adopted by the city council as provided in section 11-2246 hereof. Any such resolution shall contain a list in which shall be described each lot or parcel of land, and either the total number of square feet of property contained therein or the total number of linear feet abutting the improvements as may be required to determine the total assessment in the district, and the amount levied against each lot or parcel of land set opposite. Such resolution, signed by the mayor and city clerk, shall be kept on file in the office of the city clerk, and a notice signed by the city clerk, stating that the resolution levying the assessment to defray the portion of the cost of installing and maintaining said lights and supplying electrical current therefor for the first (1st) year, as determined by the city or town council, is on file in his office subject to inspection for a period of five (5) days, shall be published at least once in a newspaper published in the city. Such notice shall state the time and place at which objections to the final adoption of such resolution shall be heard by the city or town council, and the time for such hearing shall not be less than five (5) days after the publication of such notice. At the time so fixed the council shall meet and hear all such objections and for the purpose may adjourn from day to day, and may modify such resolution in whole or in part. A copy of such resolution as finally adopted, certified by the city clerk, must be delivered within two (2) days after its passage to the city treasurer. All moneys derived from the collection of such assessments shall constitute a fund to be known as "Special Improvement Lighting District No. ..... Fund."

History: En. Sec. 6, Ch. 143, L. 1915; re-en. Sec. 5265, R. C. M. 1921; amd. Sec. 4, Ch. 143, L. 1927; amd. Sec. 1, Ch. 26, L. 1929.

Collateral References
Municipal Corporations⊂⇒449 (1-4), 455.
63 C.J.S.Municipal Corporations §§ 1391, 1399.

References
School District No. 1 v. City of Helena, 87 M 300, 308, 287 P 164; Marchi v. Brackman, 130 M 228, 299 P 2d 761, 766.

Power to impose cost of maintenance or operation of street lighting system on local improvement district. 60 ALR 272.

11-2252. (5266) **Maintenance of system—assessment of costs.** (1) The lights in each district shall be maintained by contract for such period of time and in such way or manner as the city or town council shall elect; provided, however, that the city or town council shall not let a contract for a period to exceed three (3) years. It shall be the duty of the city or town council to estimate, as nearly as practicable, the cost of maintaining such lights and furnishing electrical current therefor each year, and the portion

thereof to be assessed against the property embraced within the district, and before the first Monday in October pass and finally adopt a resolution levying and assessing said property within said district with an amount equal to the proportion of the cost of such maintenance and electrical current so determined to be especially assessed against said property, and may further, until full liquidation is realized, include therein an amount not to exceed twenty per centum (20%) of any floating indebtedness, consisting of valid outstanding warrants drawn and issued against the maintenance funds of the several districts, existing at the close of business on the 30th day of June, 1943, together with not to exceed such per centum of the current interest thereon from such last mentioned date, which moneys derived from such portion of such levy and assessment for such additional amount, if included in such levy and assessment, may only be expended towards liquidating such floating indebtedness, together with the interest thereon, and not otherwise.

(2) Said resolution levying and assessing said portion of the cost of maintenance, and for furnishing electrical current therefor, including such additional amount, if any, towards liquidation of such floating indebtedness, shall be prepared and certified to in the same manner as the resolution provided for in the preceding section, and the same notice and hearing shall be given thereon, and shall be adopted and certified, and the assessment collected, in the same manner, as nearly as may be, in the case of the resolution provided for in the preceding section. All moneys derived from the collection of the assessment provided for in such resolution shall be paid into a fund known as "Special Improvement Lighting District No..... Maintenance Fund" and the number of which shall correspond with the number of the lighting district, for the maintenance of and the supplying of current and the raising of such liquidating amount, if any, for which the tax is levied, and such fund shall be used to defray the expense of maintaining and furnishing electrical current for the lights in said district, and, if such additional amount be included therein, towards the liquidation of such floating indebtedness, together with the interest thereon, as aforesaid, and for no other purpose; provided, however, that the city or town council shall have the power not more than once in a year to change by resolution the boundaries and number of any maintenance district but such change of boundaries shall not affect indebtedness existing at the time of such change.

(3) Any special assessment levied and made for any purpose aforesaid, together with all costs and penalties, shall constitute a lien upon and against the property upon which assessment is made and levied, from and after the date of the final passage and adoption of the resolution levying the same, which lien can only be extinguished by payment of such assessment, with all penalties, costs and interest, or otherwise as provided by law.

History: En. Sec. 7, Ch. 143, L. 1915; re-en. Sec. 5266, R. C. M. 1921; amd. Sec. 1, Ch. 17, L. 1923; amd. Sec. 7, Ch. 143, L. 1927; amd. Sec. 1, Ch. 162, L. 1943.

References

Marchi v. Brackman, 130 M 228, 299 P 2d 761, 765.

Collateral References

Municipal Corporations⇐449 (1-3), 450 (1), 519 (1), 887.

63 C.J.S. Municipal Corporations §§ 1359 et seq., 1391, 1564 et seq.; 64 C.J.S. Municipal Corporations § 1884.

11-2253. (5267) **Effect of mistake as to ownership of property.** When, under any of the provisions of this act, special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner, or other mistake relating to the ownership thereof, shall affect such assessment, or render it void or voidable.

History: En. Sec. 8, Ch. 143, L. 1915; re-en. Sec. 5267, R. C. M. 1921.

11-2254. (5268) **Remedies for correction of errors.** All remedies, provisions, and means provided by existing laws or by the ordinances of any city availing itself of the provisions of this act for the correction of errors or omissions in the adoption of any resolution or proceeding, or in the levy of any assessment, or for the collection thereof, or for the enforcement of any such levy by sale of the property against which any assessment shall be made, or for the redemption of such property from such sale, or otherwise applicable to the administration of this act, shall be available in the administration hereof, the same to all intents and purposes as would be the case where such remedies, provisions, and means made a part hereof.

History: En. Sec. 9, Ch. 143, L. 1915; re-en. Sec. 5268, R. C. M. 1921.

Collateral References

Municipal Corporations⇐490.

63 C.J.S. Municipal Corporations §§ 1459, 1478.

11-2255. (5269) **Procedure for discontinuance of system.** If at any time after the creation of any special improvement lighting district a petition shall be presented to the city or town council, signed by the owners or agents of more than three-fourths (¾) of the total amount of property embraced within the district, asking that the maintenance and operation of such special lighting system and the furnishing of electrical current therefor, in such district, be discontinued, the city or town council shall thereupon, by resolution, provide for discontinuing the maintenance and operation of the lighting system; provided, however, that if the city or town council shall have, prior to the presentation of such petition, entered into any contract for the maintenance and operation of such lighting system, such maintenance and operation shall not be discontinued until after the expiration of the contract.

History: En. Sec. 10, Ch. 143, L. 1915; re-en. Sec. 5269, R. C. M. 1921; amd. Sec. 5, Ch. 143, L. 1927.

Collateral References

Electricity⇐11.

29 C.J.S. Electricity §§ 24-28, 29-37.

11-2256. (5270) **Repealing and saving clauses.** All acts and parts of acts in conflict herewith are hereby repealed; provided, however, that each and every special improvement lighting district created, or attempted to have been created, and each and every bond and warrant issued, and each and every assessment made and heretofore created under and by

virtue of any of the acts of 1911 and 1913, shall not be invalidated, but the same are hereby validated, legalized, and approved.

History: En. Sec. 11, Ch. 143, L. 1915; re-en. Sec. 5270, R. C. M. 1921.

11-2257. (5271) **Property of United States not liable for costs.** Whenever any lot, piece or parcel of land belonging to the United States, or mandatory of the government, shall be included within the boundaries of the proposed special improvement lighting district declared by the city or town council in its resolution of intention to be the district to be assessed to pay the costs and expenses thereof, said council shall, in the resolution of intention, declare that said lots, pieces or parcels of land, or any of them, shall be omitted from the assessment thereafter to be made to cover the costs and expenses of said work or improvement and the cost of said work or improvement which would have been assessed against said lots shall be paid by the city from its general fund.

History: En. Sec. 12, Ch. 143, L. 1915; re-en. Sec. 5271, R. C. M. 1921; amd. Sec. 6, Ch. 143, L. 1927.

Collateral References

Municipal Corporations⇨426.
63 C.J.S. Municipal Corporations § 1332.

References

School District No. 1 v. City of Helena, 87 M 300, 308, 287 P 164.

11-2258. (5271.1) **Improvements within sprinkling districts.** Cities and towns are hereby authorized and empowered to prepare and improve streets, avenues and alleys, within the sprinkling districts, so that the sprinkling and applying of water, oil, and salt or any other dust palliative or preventive will be of a durable and continuing benefit and the city or town council shall provide, by ordinance, a method, or methods, of doing said work and improvement.

History: En. Sec. 1, Ch. 12, Ex. L. 1933.

Collateral References

Municipal Corporations⇨269 (2).
63 C.J.S. Municipal Corporations §§ 1042-1044.

11-2259. (5271.2) **Power to borrow money from United States—repayment.** Cities and towns are authorized to enter into suitable agreements with the United States of America for loans of money and for receiving financial assistance to do the work and improvements contemplated by section 11-2258, and to provide for the repayment thereof by yearly payments from funds derived from such sprinkling districts created under section 11-2258, apportioned over a period of time not exceeding twenty (20) years.

History: En. Sec. 2, Ch. 12, Ex. L. 1933.

Collateral References

Municipal Corporations⇨869.
64 C.J.S. Municipal Corporations § 1869.

11-2260. (5271.3) **Maintenance of improvements.** Cities and towns are authorized to maintain the work and improvements made under section 11-2258.

History: En. Sec. 3, Ch. 12, Ex. L. 1933.

Collateral References

Municipal Corporations⇨269 (1).
63 C.J.S. Municipal Corporations § 1043.

11-2261. (5271.4) **Power to assess costs against property.** Cities and towns are authorized to assess the cost of such work, improvements and maintenance against the property in such sprinkling districts in the manner and as provided in section 11-2267, to meet the payments required to be made each year.

History: En. Sec. 4, Ch. 12, Ex. L. 1933.

Collateral References

Municipal Corporations⇐413 (1).
63 C.J.S. Municipal Corporations § 1304 et seq.

11-2262. (5271.5) **Notice of ordinance — publication — protests.** At least fifteen (15) days must elapse between the day on which said proposed ordinance is introduced and the day on which final action thereon is taken. The city or town clerk must give notice of the introduction of such proposed ordinance, and of the time it will be up for passage, by publication three (3) times in a daily newspaper, or a newspaper printed and published every day except Sunday, or in a weekly newspaper for two (2) successive issues, in such city or town, or, if there be no such newspaper, then by posting for at least ten (10) days in three (3) public places in each of the wards of said city or town. If forty per cent (40%) or more of the abutting property owners protest in writing to said city or town council against the passage of said proposed ordinance, then no further action shall be taken thereon and the same shall lapse.

History: En. Sec. 5, Ch. 12, Ex. L. 1933.

Collateral References

Municipal Corporations⇐455.
63 C.J.S. Municipal Corporations § 1399.

11-2263. (5272) **Street sprinkling.** Whenever the council of any city or town desires to sprinkle all or any part of the streets or avenues of its city or town with water, oil, salt, or any other dust palliative, as provided in this chapter, it shall provide, by ordinance, a method of doing said work, and of paying for the same under the following restriction and regulations.

History: En. Sec. 24, p. 218, L. 1897; re-en. Sec. 3390, Rev. C. 1907; re-en. Sec. 5272, R. C. M. 1921; amd. Sec. 1, Ch. 97, L. 1927.

Paving Projects

Where the work represents either a minor or major repaving or resurfacing project, it cannot be financed by special improvement taxes for the creation of a sprinkling district, but must be financed under section 11-2401. Cyr v. City of Missoula, 135 M 94, 337 P 2d 365; Peterson v. City of Missoula, 135 M 96, 337 P 2d 367.

References

Stadler v. City of Helena, 46 M 128, 135, 127 P 454; Griffith v. City of Butte, 72 M 552, 234 P 829.

Collateral References

Municipal Corporations⇐674.
64 C.J.S. Municipal Corporations § 1699.

11-2264. (5273) **Street sprinkling—creation of districts.** A resolution dividing the whole or any part of their city or town into sprinkling districts, to be known and designated by number, shall be passed; said resolution shall plainly define the boundaries of the several districts, or enumerate the streets, alleys, and public places, or any part thereof, constituting the different districts.

History: En. Sec. 25, p. 218, L. 1897; re-en. Sec. 3391, Rev. C. 1907; re-en. Sec. 5273, R. C. M. 1921.

Collateral References

Municipal Corporations⇐450 (1).
63 C.J.S. Municipal Corporations § 1359.

References

Griffith v. City of Butte, 72 M 552, 562, 234 P 829.

11-2265. (5274) **Street sprinkling—change of district.** When once defined, sprinkling districts shall not be changed during the same calendar year, but may be changed by resolution the following year, or any year thereafter.

History: En. Sec. 26, p 218, L. 1897; re-en. Sec. 3392, Rev. C. 1907; re-en. Sec. 5274, R. C. M. 1921.

11-2266. (5275) **Assessment to pay for work.** The sprinkling in districts so established may be done by contract, or by forces employed by the city or town, or by both, in such manner as the council may elect, and it shall be the duty of said council to estimate, as near as practicable, the cost of sprinkling in such districts so established for the season, and before the first Monday in November of each year they shall pass and finally adopt a resolution levying and assessing all the property within the several districts with an amount equal to not less than seventy-five per cent of the entire cost of said work, exclusive of the cost of sprinkling parks and public places.

History: En. Sec. 27, p. 218, L. 1897; amd. Sec. 3, Ch. 123, L. 1903; re-en. Sec. 3393, Rev. C. 1907; re-en. Sec. 5275, R. C. M. 1921.

Collateral References

Municipal Corporations⇐412.
63 C.J.S. Municipal Corporations § 1302.

11-2267. (5276) **Assessment to pay for work—method of assessment.** The assessments for the cost and expense of sprinkling streets shall be made against all of the property embraced within each sprinkling district by one of the three following methods:

1. Frontage Basis. Each lot or parcel of land within such district, abutting upon some street upon which sprinkling is done, shall be assessed for that part of the whole cost which its street frontage bears to the street frontage of the entire district.

2. Area Basis. Each lot or parcel of land within such district shall be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys and public places.

3. Combination of Frontage and Area Basis. A portion of the total cost, to be assessed in each sprinkling district, may be assessed against the several lots or parcels of land within the district by Method No. 1 on a frontage basis, and the remainder of such cost by Method No. 2 on an area basis. The proportion to be assessed in each district by each such method shall be determined and fixed by the city or town council.

History: En. Sec. 28, p. 218, L. 1897; re-en. Sec. 3394, Rev. C. 1907; re-en. Sec. 5276, R. C. M. 1921; amd. Sec. 2, Ch. 97, L. 1927.

Collateral References

Municipal Corporations⇐468, 469 (1).
63 C.J.S. Municipal Corporations § 1426 et seq.

Assessments for improvements by the front-foot rule. 56 ALR 941.

11-2268. (5277) **Assessment to pay for work—method of levy of assessment.** The resolution levying the assessment to defray the cost of sprinkling shall contain a list in which shall be described the lot or parcel of land assessed, with the name of the owner thereof, if known, and the amount levied thereon set opposite; such resolution shall be kept on file in the office of the city clerk, and a notice signed by the city clerk, stating that the resolution levying special assessment to defray the cost of sprinkling in the several districts is on file in his office and subject to inspection for a period of five days, shall be published at least once in a newspaper published in a city or town. Such notice shall state the time and place at which objections to the final adoption of such resolution will be heard by the council, and the time for such hearing shall be not less than five days after the publication of such notice. At the time so set, the council shall meet at their regular place of meeting and hear all objections which may be made to such assessment, or any part thereof, and may adjourn from time to time, for that purpose, and may, by resolution, modify such assessment in whole or in part. A copy of such resolution, certified by the city clerk, must be delivered to the city treasurer on or before the first Monday in October, and such assessment shall be placed upon the tax roll, and collected in the same manner as other taxes.

History: En. Sec. 29, p. 218, L. 1897; re-en. Sec. 3395, Rev. C. 1907; re-en. Sec. 5277, R. C. M. 1921.

References

Stadler v. City of Helena, 46 M 128, 133, 135, 127 P 454.

Collateral References

Municipal Corporations⇨449 (3), 455.

63 C.J.S. Municipal Corporations §§ 1391, 1399.

11-2269. (5277.1) **Special improvement district revolving fund.** The city or town council or commission of any city or town which has heretofore created, or may hereafter create, any special improvement district or districts for any purpose, may in its discretion, as to such district or districts heretofore created, and shall, as to such district or districts hereafter created, in order to secure prompt payment of any special improvement district bonds or warrants issued in payment of improvements made therein, and the interest thereon as it becomes due, create, establish, and maintain by ordinance a fund to be known and designated as "Special Improvement District Revolving Fund."

History: En. Sec. 1, Ch. 24, L. 1929.

Constitutionality—Validity as to Districts Created in Future, Invalidity as to Those Established in the Past

Held, that chapter 24, Laws 1929 (11-2269 to 11-2273) is not violative of section 1, article XIV, amendments to the federal constitution, or article V, section 26, article XIII, section 1 nor article XV, section 13 of the state constitution; held further, that assumption of liability for losses suffered under bonds and warrants issued prior to passage of the act is violative, but as to districts to be created in the future is not violative, of article XII, section 11, state constitution. Stanley v. Jeffries, 86 M 114, 123, 284 P 134.

Contention that sections 11-2269 to 11-2273, referring to the matter of special improvement district revolving funds, are in conflict with article XIII, section 1, contravene article V, section 26, and conflict with article XII, section 11 of the state constitution, held groundless under authority of the case of Stanley v. Jeffries, 86 M 114, 284 P 134. Hansen v. City of Havre, 112 M 207, 216, 114 P 2d 1053.

Bond Issues—Payment

Where a special improvement district was established under section 11-2202 and bonds were issued "payable from the collection of the special tax or assessment which is a lien against the real estate within said improvement district," the bonds

were not a general obligation of the town and the town could not be compelled to redeem the bonds from a water fund made up of water rentals from water users, even though the town may have had authority to make payments from such fund. State ex rel. Truax v. Town of Lima, 121 M 152, 193 P 2d 1008, 1010.

Collateral References

Municipal Corporations⇐887.
64 C.J.S. Municipal Corporations § 1884.

Power and duty to include in a periodical special assessment the amount of a deficiency for a previous period resulting from delinquent assessments which may eventually be paid. 96 ALR 1275.

11-2270. (5277.2) **Transfers from general fund and tax levy for revolving fund.** For the purpose of providing funds for such revolving fund the city or town council

(1) may in its discretion, from time to time, transfer to the revolving fund from the general fund of the city or town such amount or amounts as may be deemed necessary, which amount or amounts so transferred shall be deemed and considered, and shall be, loans from such general fund to the revolving fund; and

(2) shall, in addition to such transfer or transfers from the general fund, or in lieu thereof, levy and collect for such revolving fund such a tax, hereby declared to be for a public purpose, on all the taxable property in such city or town as shall be necessary to meet the financial requirements of such fund, such levy, together with such transfer, not to exceed in any one year five per centum (5%) of the principal amount of the then outstanding special improvement district bonds and warrants.

History: En. Sec. 2, Ch. 24, L. 1929.

References

Hansen v. City of Havre, 112 M 207, 211, 114 P 2d 1053.

Collateral References

Right of municipal authorities temporarily to loan or transfer money from one fund or department to another. 70 ALR 431.

11-2271. (5277.3) **Loans from revolving fund for paying improvement district warrants—authorization by electors.** (1) Whenever any special improvement district bond or warrant, or any interest thereon, shall be, at the time of the passage of this act, or shall thereafter become due and payable, and there shall then be either no money or not sufficient money in the appropriate district fund with which to pay the same, an amount sufficient to make up the deficiency may, by order of the council, be loaned by the revolving fund to such district fund, and thereupon such bond or warrant or such interest thereon, or in case of such bonds or warrants due at the time of the passage of this act, such part of the amount due on such bond or warrant, whether it be for principal or for interest or for both as the council may in its discretion elect or determine, shall be paid from the money so loaned or from the money so loaned when added to such insufficient amount, as the case may require; provided, however, that the above provisions of sections 11-2269, 11-2270 and 11-2271 of this code shall not apply to any district or districts heretofore created, unless and until, at an election, either the regular annual municipal election or a special election called by the council, a majority of the electors whose names appear as the owners of property in the city or town on the last completed tax roll of the county in which the city or town is situated, shall authorize the city or town council to proceed thereunder, such election to be called and conducted in the manner and under such

regulations as the council may provide. At such election no person other than such qualified elector and taxpayer shall vote on said question, and a majority of those voting thereat shall be sufficient to determine, and shall determine, the question whether the council be authorized or not to proceed under sections 11-2269, 11-2270 and 11-2271 of this code.

(2) In connection with any public offering of special improvement district bonds or warrants, the city or town council may undertake and agree to issue orders annually authorizing loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts thereof to the extent that funds are available, and may further undertake and agree to provide funds for such revolving fund pursuant to the provisions of section 11-2270 by annually making such tax levy (or, in lieu thereof, such loan from the general fund) as the city or town council may so agree to and undertake, subject to the maximum limitations imposed by said section 11-2270, which said undertakings and agreements shall be binding upon said city or town so long as any of said special improvement district bonds or warrants so offered, or any interest thereon, remain unpaid.

History: En. Sec. 3, Ch. 24, L. 1929; amd. Sec. 1, Ch. 179, L. 1945.

"May" Means "Must"

The provision of this section "may, by order of the council be loaned" out of the special improvement revolving fund, held mandatory, the word "may" meaning "must," thus leaving no discretion in the city officials or their successors. Hansen v. City of Havre, 112 M 207, 217, 114 P 2d 1053.

Unconstitutional in Part

Chapter 24, Laws 1929 (11-2269 to 11-2273), in so far as it authorizes cities to assume liabilities for losses suffered by holders of special improvement bonds and warrants issued prior to the passage of the act, amounts to a reimbursement of the holders of such losses, is violative of section 11, article XII of the constitution, prohibiting taxation for other than a public purpose, and therefore invalid in that regard. Stanley v. Jeffries, 86 M 114, 123, 284 P 134.

Collateral References

Municipal Corporations⇐867 (2), 904 (1), 953.

64 C.J.S. Municipal Corporations §§ 1859 et seq., 1900, 1955.

11-2272. (5277.4) **Lien for loans from revolving fund—surplus district funds transferred to revolving fund.** Whenever any loan is made to any special improvement district fund from the revolving fund, the revolving fund shall have a lien therefor on all unpaid assessments and installments of assessments on such district, whether delinquent or not, and on all moneys thereafter coming into such district fund, to the amount of such loan, together with interest thereon from the time it was made at the rate, or percentage, borne by the bond or warrant for payment of which, or, of interest thereon, such loan was made; and whenever there shall be moneys in such district fund which are not required for payment of any bond or warrant of such district, or of interest thereon, so much of such moneys as may be necessary to pay such loan shall, by order of the council, be transferred to the revolving fund; and after all the bonds and warrants issued on any special improvement district have been fully paid, all moneys remaining in such district fund shall by order of the council be transferred to and become part of the revolving fund.

History: En. Sec. 4, Ch. 24, L. 1929.

Constitutionality

This section, providing a lien for moneys loaned to a special city improvement dis-

trict is not obnoxious to section 10, article I of the federal constitution as impairing the obligations of the contracts of the holders of the bonds of the district, in that the lien is superior, senior and prior to that of such holders, the purpose of the revolving fund being rather to add to the holders' security. Hansen v. City of Havre, 112 M 207, 216, 114 P 2d 1053.

Collateral References

Municipal Corporations⇨887.
64 C.J.S. Municipal Corporations § 1884.

11-2273. (5277.5) **Use of excess moneys in revolving fund.** Whenever there is in the revolving fund an amount in excess of the amount which the council deems necessary for payment or redemption of maturing bonds or warrants or interest thereon, the council may

(1) by vote of all of its members at a meeting called for that purpose, order such excess or any part thereof transferred to the general fund of such city or town, or

(2) use such excess or any part thereof for the purchase of property at sales for delinquent taxes or assessments, or both, or which may have been struck off or sold to the county for delinquent taxes or assessments, or both, and against which property there then be any unpaid assessment for special improvements on account whereof there are outstanding special improvement district bonds or warrants of the city or town.

The council may sell any tax certificates issued on any such sale or sales. After acquiring title to such property, the city or town may lease such property, or sell the same at public or private sale and make conveyance thereof, or otherwise dispose thereof as the interest of the city or town may require. All proceeds from such sales of tax certificates, and from such leasing, sale, or other disposition of the property, shall belong to and be paid into the revolving fund, and be subject to transfer in whole or in part to the general fund by the vote of all the members of the council at a meeting called for that purpose, as hereinbefore provided.

History: En. Sec. 5, Ch. 24, L. 1929.

References

Hansen v. City of Havre, 112 M 207, 211, 114 P 2d 1053.

Collateral References

Municipal Corporations⇨580, 887.
63 C.J.S. Municipal Corporations § 1644; 64 C.J.S. Municipal Corporations § 1884.

11-2274. Supplemental revolving fund from parking meter revenue. A city or town may create, establish, and maintain a supplemental revolving fund out of the net revenues of parking meters to secure prompt payment of principal of and interest on special improvement district bonds issued under the provisions of this act for improvements undertaken pursuant to sections 11-2201 to 11-2273 for the following purposes: paving, repaving, macadamizing, remacadamizing, surfacing, resurfacing, oiling, reoiling, graveling, regraveling, piling, repiling, capping, recapping, grading or regrading one or more streets, alleys, avenues or other public places or ways in said city or town and/or constructing therein curbs or gutters or for the opening or widening of any street, avenue, alley or other public way, provided that the provisions of this act shall not be applicable to any improvement unless the council shall find that eighty (80%) per cent or more in area of the total parcels to be assessed for such improvement have been improved by the erection of permanent buildings or

structures thereon having a value greater than the value of such parcels without such improvements according to the last assessment roll.

History: En. Sec. 1, Ch. 260, L. 1947.

11-2275. Creation and maintenance of fund. A supplemental revolving fund may be created by ordinance subject to the approval of a majority of the qualified electors voting upon the question at a general or special election. As used in this act "qualified electors" shall mean registered electors whose names appear upon the last preceding assessment roll for state and county taxes as taxpayers upon property within the municipality. The supplemental revolving fund shall be created and maintained solely from the net revenues of parking meters and the ordinance may pledge to said fund all or any part of the said net revenues of parking meters which may be then owned or leased or rented or thereafter acquired by the city or town. Said ordinance shall contain such provisions in respect to the purchase, control, operation, repair and maintenance of parking meters, including rates to be charged, and the application of the net revenues therefrom and the management and use of the supplemental revolving fund as the council shall deem necessary.

History: En. Sec. 2, Ch. 260, L. 1947.

11-2276. Issuance of bonds—submission to electors. At any time after the award of the contract for any of the improvements described in section 11-2274 and prior to the issuance of bonds or warrants therefor under the provisions of section 11-2231 the council may by resolution determine that such improvement is of a character that bonds may be issued hereunder in lieu of bonds under said section 11-2231, and may submit to the qualified electors of the city or town the question whether such bonds shall be issued. The proposal to issue bonds may be submitted at the same election as the proposal to create the supplemental revolving fund and must be approved by a majority of the qualified electors voting on the question.

History: En. Sec. 3, Ch. 260, L. 1947.

11-2277. Determination of provisions of bonds—maturity—interest—form. Whenever the council has been authorized to issue bonds hereunder, the council may by resolution determine to issue such bonds and provide for the guaranty thereof by the supplemental revolving fund. Such resolution shall fix the amount, maturity, and interest rate and provide for the sale of bonds in such manner as the council shall determine. The governing body of the municipality in determining the cost of said improvement may include estimated costs of the issuance of said bonds, all engineering, inspection, fiscal and legal expenses, cost of the parking meters, and interest which it is estimated will accrue during the construction period and for six (6) months thereafter on money borrowed or which it is estimated will be borrowed for the special improvements for which bonds are issued. The bonds may mature at one time, not exceeding the maximum maturity of the assessments to be levied for said improvement or may mature in installments at various times during the term of said assessments, but in no event shall such bonds mature beyond ten (10) years

from date thereof. Said bonds shall bear interest payable annually or semi-annually, not exceeding four and one-half (4½%) per cent per annum, as the council shall determine, shall be subject to redemption prior to maturity if so determined by the council, and may be payable at any suitable bank or trust company either within or without the state of Montana. The resolution providing for the issuance of bonds may also contain such reasonable covenants for the protection of the holders thereof as the council may determine. The bonds issued hereunder shall be in substantially the form provided in section 11-2231 as modified by the provisions hereof.

History: En. Sec. 4, Ch. 260, L. 1947.

11-2278. Operation and use of fund. Moneys in the supplemental revolving fund shall first be loaned to the various district funds whose bonds are guaranteed hereunder to make up any deficiency in such fund. In event of any further deficiency in such funds, the moneys in the revolving fund created under sections 11-2269 to 11-2273 may be loaned to make good such deficiency pursuant to the provisions of said sections. In event that the deficit exceeds the moneys in the supplemental revolving fund then the moneys in the revolving fund may be similarly loaned until the deficiency has been made good. A deficiency shall exist in any district fund whenever principal and interest is due and there are no moneys in the fund to pay the same and the authorizing resolution may provide that bonds shall become due in accordance with a plan of redemption prior to the stated maturity date. Both revolving funds shall thereafter have concurrent liens on the unpaid assessments and the moneys in the improvement district fund for all such advances, provided that such advances shall not be returned so long as any principal or interest on bonds issued hereunder remains unpaid.

History: En. Sec. 5, Ch. 260, L. 1947.

11-2279. Obligation of city or town—enforcement of bondholder's rights. All agreements, conditions, covenants or restrictions in the ordinance creating the supplemental revolving fund, the resolution determining that the improvement is of a character for which bonds may be issued under this act and in the resolution authorizing the issuance of bonds shall be binding upon the city or town and may not be thereafter altered or amended to the detriment of the rights of any bond holder so long as any of such bonds are outstanding. The provisions of this act and the rights granted under any such ordinance or resolution may be enforced by any bond holder by mandamus or other appropriate suit, action, or proceeding in any court of competent jurisdiction.

History: En. Sec. 6, Ch. 260, L. 1947.

11-2280. Court determination of validity of proceedings. Within ten (10) days after the adoption of the resolution providing for the issuance of bonds hereunder, the council may file a petition in the district court of the judicial district wherein said city or town is located to determine the validity of the proceedings theretofore had relative to the issuance of said bonds, the creation of the supplemental revolving fund, and the levy of a

special assessment. Such action shall be in the nature of a proceeding in rem and jurisdiction of all parties interested shall be had by notice given as hereinafter provided. The petition shall set forth generally the facts in reference to the improvement, the creation of the supplemental revolving fund and the issuance of bonds, and shall have as exhibits thereto certified copies of the ordinances and resolutions and shall pray for confirmation of the proceedings and of the bond issue and the special assessments, if theretofore levied. Upon the filing of said petition, the district court or any judge thereof shall fix the time for hearing on said petition, which shall not be less than fifteen (15) days from the date of filing the petition in said court and shall order the clerk of the court to give notice of the filing of said petition and the date of hearing thereon by publication at least once a week for two (2) calendar weeks in a newspaper published or of general circulation in the county where the city or town is situated, and also by posting a written or printed copy thereof in at least three (3) public places in each voting precinct of said city or town, the date of first publication and posting to be not less than fifteen (15) days prior to the date fixed for hearing. The notice shall state the substance of the petition and the time and place for hearing and that any person interested or whose rights may be affected by the issuance or sale of said bonds or the levy of said special assessment may on or before the day fixed for hearing of said petition demur to or answer said petition and may appear at said hearing and contest the granting of the prayer of said petition and the entry of any order of confirmation pursuant thereto. Any person so notified to appear may enter his appearance in such proceedings and demur to or answer the petition and contest the granting of the prayer of said petition and all provisions of the code of civil procedure shall be applicable to said proceedings. If upon the hearing the court shall find and determine that the requirements of this act have been complied with and notice of the hearing duly given as required by law, it shall have power to examine and determine the regularity, legality and validity of the proceedings relative to the issuance of the bonds and the levy of special assessments and the legality and validity of the bonds and the special assessment and may ratify, approve, and confirm the said proceedings in whole or in part and enter its judgment or decree accordingly. From any such judgment or decree an appeal may be taken to the supreme court at any time within ten (10) days from the entry of such judgment in the manner prescribed by the Code of Civil Procedure governing appeals from the district court to the supreme court. If no such appeal be taken within the time aforesaid, or if the judgment or decree of the district court be affirmed upon such appeal, such judgment or decree shall be forever conclusive upon all the world as to the validity of the bonds and the special assessment and the same shall never be called into question in any court of the state. The cost of said proceedings shall be allotted or apportioned between the parties in the discretion of the court.

History: En. Sec. 7, Ch. 260, L. 1947.

11-2281. Separability clause. If any provisions of this act or the application of such provision to any person, body or circumstance shall be held invalid, the remainder of this act or the application of such pro-

visions to persons, bodies or circumstances other than those to which it is held invalid shall not be affected thereby.

History: En. Sec. 8, Ch. 260, L. 1947.

11-2282. Cancellation of extinguished liability accounts. The city council of any city and the town council of any town in the state of Montana is hereby authorized to cancel of record all or any special improvement district liability accounts incurred or issued prior to February 25, 1929, the liability of which has been extinguished by reason of issuance of a tax deed, or by the application of the statute of limitations or other laws of the state of Montana.

History: En. Sec. 1, Ch. 65, L. 1949; amd. Sec. 1, Ch. 2, L. 1951.

Collateral References

Municipal Corporations⇨375.

63 C.J.S. Municipal Corporations § 1208.

11-2283, 11-2284. Repealed—Chapter 57, Laws of 1953.

Repeal

These sections (Secs. 1, 3, Ch. 44, L. 1951), relating to the recording by city, town, or county clerks of notice of proceedings for the installation of special improvements, were repealed by Sec. 1, Ch. 57, Laws 1953.

11-2285. Street parking improvement districts — abandonment. Whenever it is deemed to the best interest of a city or town or the inhabitants thereof by the mayor and council of such city or town the mayor and council of any city or town in the state of Montana, be, and they are authorized to abandon the maintenance of any street parking improvement district established in such city or town by the passage of a resolution of intention to abandon the same. After the passage of such resolution the city or town clerk shall give notice of such intention to abandon by one publication in a newspaper published in such city or town at least ten (10) days prior to the passage of a resolution abandoning the same. In case there is no publication of a newspaper in such city or town then notice shall be given by the posting of a notice of such intention to abandon in three (3) places within such district to be abandoned. Said notice shall specify the boundaries of such district to be abandoned, the date of the passage of the resolution of intention to abandon, and the date set for the passage of the resolution of abandonment, and that unless forty per cent (40%) of the owners in the district file written protest with the clerk of such city or town before the passage of the resolution same will be passed. Said notice shall also set forth, when applicable, that it shall be the duty of the owners of the property abutting on the street parking district involved to maintain the same after such abandonment. Unless forty per cent (40%) of the property owners owning property abutting such district file written protests against such abandonment upon the date set for the passage of such resolution of abandonment said council shall forthwith pass a resolution declaring such district abandoned. It shall then be the duty of all property owners owning property abutting said district to maintain such portion thereof abutting their property. Such abandonment however shall not relieve the property owners from the assessment and payment of a sufficient amount to liquidate all charges existing against said district prior to the date of abandonment.

History: En. Sec. 1, Ch. 38, L. 1951.

Collateral References
Municipal Corporations⇐861.
64 C.J.S. Municipal Corporations § 1845.

11-2286. City and town council—powers and duties—repair and maintenance—resolutions. In all cities or towns the city or town council shall have power, and it is hereby made the duty of each city or town council, where it is necessary or advisable in connection with any special improvement district, to provide in addition to the construction of the proposed improvements for repairs to existing facilities, or for maintenance of improvements or repairs, or for both such repairs and maintenance, to include in the resolution or ordinance creating such special improvement districts or providing for assessments to defray the cost of improvements, repairs, and maintenance, a statement showing the allocation of the total amounts, either in dollars and cents or in percentages of said total amounts, to be assessed or assessed to said different purposes, to wit: To improvements, to repairs if any, and to maintenance if any.

History: En. Sec. 1, Ch. 39, L. 1953.

Collateral References
Municipal Corporations⇐887.
64 C.J.S. Municipal Corporations § 1884.

11-2287. Designation of district. In all cases set out in the preceding section the city or town council shall designate the special district formed as a special improvement and repair district, or a special improvement and maintenance district, or a special improvement, repair and maintenance district, as the case may be.

History: En. Sec. 2, Ch. 39, L. 1953.

Collateral References
Municipal Corporations⇐887.
64 C.J.S. Municipal Corporations § 1884.

11-2288. Investment of interest and sinking fund moneys. The governing body of a county or city in which a special improvement district is located, may invest interest and sinking fund moneys of the district in time deposits of a bank insured by the federal deposit insurance corporation, or in direct obligations of the United States government payable within one hundred eighty (180) days from the time of investment. All interest collected on such deposits or investments shall be credited to the fund from which the money was withdrawn.

History En. Sec. 1, Ch. 45, L. 1965.

CHAPTER 23

MUNICIPAL BONDS AND INDEBTEDNESS

Section 11-2301. Creation of indebtedness—submission to taxpayers.
11-2302. Single purpose.
11-2303. Limitation on amount of indebtedness.
11-2304. Terms of bonds—rates of interest.
11-2305. Form of bonds.
11-2306. Petition for election—form—proof.
11-2307. Consideration of petition—calling election.
11-2308. Notice of election—election hours—election officers.
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11-2301. (5278.1) **Creation of indebtedness—submission to taxpayers.** Whenever the council or commission of any city or town having a corporate existence in this state, or hereafter organized under any of the laws thereof, shall deem it necessary to issue bonds for any purpose whatever, under its powers as set forth in any statute or statutes of this state, or amendments thereto, the question of issuing such bonds shall first be submitted to the electors of such city or town who are qualified to vote on such question, in the manner hereinafter set forth; provided, however, that it shall not be necessary to submit to such electors the question of issuing refunding bonds to refund bonds theretofore issued and then outstanding: provided further that no refunding bonds shall be issued unless such refunding bonds shall bear interest at a rate of at least one-half of one per cent (½ of 1%) less than the interest rate of the outstanding bonds to be refunded. In order to issue bonds to refund bonds theretofore issued and outstanding it shall only be necessary for the council, at a regular or duly called special meeting, to pass and adopt a resolution setting forth the facts with regard to the indebtedness to be refunded, showing the reason for issuing such refunding bonds, and fixing and determining the details thereof, giving notice of sale thereof in the same manner that notice is required to be given of sale of bonds authorized at an election and then following the procedure in this act for the sale and issuance of such bonds.

History: En. Sec. 1, Ch. 160, L. 1931; amd. Sec. 1, Ch. 100, L. 1933; amd. Sec. 1, Ch. 12, L. 1937; amd. Sec. 1, Ch. 108, L. 1937; amd. Sec. 1, Ch. 15, L. 1943; amd. Sec. 1, Ch. 62, L. 1945.

11-2301. (Continued)

Section 2. Where prior to the enactment of this chapter, proceedings for the issue and sale of bonds by any city or town in this state under its powers as set forth in any statute or statutes of the state of Montana, have been commenced or completed in accordance with the provisions of chapter 399 of the Political Code of the Revised Codes of Montana, 1935, such proceedings shall be held valid and sufficient and the completion of such proceedings under the authority of this chapter is hereby authorized, and said proceedings when completed shall be of the same force and effect as

if the provisions of this chapter had been in effect when said proceedings were commenced.

NOTE.—The foregoing "Section 2" was enacted as a part of Chapter 12, Session Laws of 1937 which purported to be an amendment of Section 5278.1, R. C. M. 1935. That section, as shown in the history above, was amended by three later acts in none of which said "Section 2" appeared as a part of the amendment. Because of the resulting question as to whether said "Section 2" is still in effect, it is given with this explanatory note as a part of section 11-2301 of this code.

Act Not Impliedly Repealed

Chapter 114, Laws 1935 (omitted), authorizing municipalities to create self-supporting undertakings in the nature of of furnishing facilities, inter alia, for the distribution of natural gas, and providing for the issuance of bonds, etc., held, not impliedly repealed by chapter 108, Laws 1937 (11-2301 and 11-2306) appearing in the history of this section. Montana-Dakota Utilities Co. v. City of Havre, 109 M 164, 171, 94 P 660.

Application of Law

The phrase "under its powers as set forth in any statute or statutes of this state" means under the city's or town's power to incur indebtedness or issue general obligation bonds as set forth in any statute. Dietrich v. City of Deer Lodge, 124 M 8, 218 P 2d 708, 712.

City or town council is not authorized to issue general obligation bonds to carry out any of the powers enumerated in section 11-901 et seq. Dietrich v. City of Deer Lodge, 124 M 8, 218 P 2d 708, 712.

Operation and Effect

This is a procedural statute rather than a grant of authority. Dietrich v. City of Deer Lodge, 124 M 8, 218 P 2d 708, 712.

Collateral References

Municipal Corporations⇦867 (2), 918 (1).

64 C.J.S. Municipal Corporations §§ 1859, 1920.

43 Am. Jur. 333, Public Securities and Obligations, §§ 77 et seq.

Funding or refunding obligations as subject to conditions respecting limitation of indebtedness or approval by voters. 97 ALR 442.

Constitutional or statutory requirement of prior approval by electors of issuance of bonds, or incurring of indebtedness, by municipality, county or state as applicable to bonds or other instruments not creating indebtedness. 146 ALR 604.

Inclusion of tax-exempt property in determining value of taxable property for debt limit purposes. 38 ALR 2d 903.

11-2302. (5278.2) **Single purpose.** Acquiring land for a site for a public building, or for any other public use, and constructing, erecting or acquiring by purchase any building thereon and furnishing and equipping the same shall be deemed a single purpose; the acquiring of rights of way for street, or other purposes, making improvements thereon, or constructing sewers or water pipelines, shall be deemed a single purpose; the procuring of a water supply and the construction or acquiring of a water system, and improving the same, if necessary, shall be deemed a single purpose.

History: En. Sec. 2, Ch. 160, L. 1931.

Collateral References

Municipal Corporations⇦910.

64 C.J.S. Municipal Corporations § 1905 et seq.

11-2303. (5278.3) **Limitation on amount of indebtedness.** No city or town shall issue bonds for any purpose in an amount which, with all outstanding and unpaid indebtedness, will exceed five per centum (5%) of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes; provided, however, that for the purpose of constructing a sewerage system, or procuring a water supply or constructing or acquiring a water system for a city or town, which shall own and control such water supply and water system and devote

the revenues therefrom to the payment of the debt, a city or town may incur an additional indebtedness by borrowing money or issuing bonds. The additional indebtedness which may be incurred by borrowing money or issuing bonds for the construction of a sewerage system, or for the procurement of a water supply, or for both such purposes, including all indebtedness theretofore contracted, which is unpaid or outstanding, shall not in the aggregate exceed ten per centum (10%) over and above the five per centum (5%) heretofore referred to, of the total value of the taxable property therein as ascertained by the last assessment for state and county taxes. The words "value of the taxable property" as used in this section, are used in the same sense as in section 6 of article XIII of the constitution and shall be given the same meaning; and provided further, that the issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds shall not be deemed the incurring of a new or additional indebtedness, but shall be deemed merely the changing of the evidence of outstanding indebtedness.

History En. Sec. 3, Ch. 160, L. 1931; amd. Sec. 1, Ch. 116, L. 1951; amd. Sec. 2, Ch. 34, L. 1955.

Permitting Special Tax in Addition to Limit Set by Statute for General Purposes

Contention by defendant town that since it was levying the maximum amount of taxes allowable under section 84-4701, it could not levy a tax each year to pay interest on water bonds and create a sinking fund, held not meritorious, the former levy being for general, municipal or administrative purposes, while under this section a special tax may be levied in addition thereto to retire bonded indebtedness and interest on such bonds. State ex rel. Mueller v. Todd, 114 M 35, 42, 132 P 2d 154, modified on other grounds in 117 M 80, 158 P 2d 299.

Collateral References

Municipal Corporations⇐864 (1), (7).

64 C.J.S. Municipal Corporations § 1846 et seq.

38 Am. Jur. 110, Municipal Corporations, §§ 422 et seq.; 43 Am. Jur. 287, Public Securities and Obligations, §§ 21 et seq.

Proposition submitted to people with reference to erection or purchase of plant or other public utility as single or double proposition. 5 ALR 538.

Obligation for local improvements as within municipal debt limit. 33 ALR 1415.

Pledge or appropriation of revenue from utility or other property in payment therefor, as indebtedness within constitutional or statutory limitation of indebtedness of municipality. 72 ALR 687; 96 ALR 1385 and 146 ALR 328.

Sale of municipal or other public bonds at less than par or face value. 91 ALR 7 and 162 ALR 396.

Validity of municipal bond issue for purpose of paying employees. 96 ALR 1204.

Funding or refunding obligations as subject to conditions respecting limitation of indebtedness or approval by voters. 97 ALR 442.

Mistake, ambiguity, or omission in statement as to indebtedness, in call for election or proposal for bond issue, as affecting validity of election or bonds issued pursuant thereto. 116 ALR 1258.

Constitutional or statutory requirement of prior approval by electors of issuance of bonds or incurring of indebtedness, by municipality, county, or state, as applicable to bonds or other instruments not creating indebtedness. 146 ALR 604.

Meaning of term "assessment" or "assessed valuation" when used as basis of tax or debt limit. 156 ALR 594.

11-2304. (5278.4) **Terms of bonds—rates of interest.** No bonds for any purpose shall be issued for a longer term than twenty (20) years, and when bonds are issued for the purpose of refunding bonds theretofore issued and outstanding, such bonds shall not be issued for a longer term than ten (10) years, provided that if the unexpired term of the bonds to be refunded shall be more than ten (10) years, then in such event, the refunding bonds may be issued for such unexpired term. All bonds issued for a longer term than five (5) years may be redeemable at the option of

the city or town five (5) years from the date of issue and on any interest payment date thereafter, and it shall be so recited in the bonds. The maximum rate of interest which any bonds may bear shall be six per cent (6%) per annum and shall be payable semiannually.

History: En. Sec. 4, Ch. 160, L. 1931; amd. Sec. 1, Ch. 34, L. 1933; amd. Sec. 2, Ch. 62, L. 1945.

NOTE.—Section 11-2312 of this code apparently is amended by implication by this section which makes all bonds issued for a longer term than five years redeemable in five years from date of issue and on any interest payment date thereafter.

Application of Amendment

The amendment to this section by Laws 1945, Ch. 62, Sec. 2 does not apply to municipal bonds that were issued and sold prior to its enactment. City of Philipsburg v. Porter, 121 M 188, 190 P 2d 676, 679.

Redemption of Bonds

Where municipal bonds were issued prior to the 1945 amendment of this section they could not be redeemed prior to maturity when such option was not stated in the bonds. City of Philipsburg v. Porter, 121 M 188, 190 P 2d 676, 678.

Collateral References

Municipal Corporations⇨923, 926.

64 C.J.S. Municipal Corporations §§ 1935 et seq., 1940.

43 Am. Jur. Public Securities and Obligations, p. 356, §§ 106 et seq.; p. 365, §§ 117 et seq.

Power of municipality to make bonds payable in gold coin. 84 ALR 1499, 1519; 88 ALR 1532; 92 ALR 1525; 95 ALR 1383; 101 ALR 1318 and 114 ALR 820.

Effect of inclusion in call for election, or in proposal for bond issue submitted to people, of unauthorized method of payment or retirement. 93 ALR 362.

Right to call governmental bonds in advance of their maturity. 109 ALR 988.

Power and discretion of officer or board authorized to issue bonds of governmental unit as regards terms or conditions to be included therein. 119 ALR 190.

Effect of delay after authorization by voters on power of governmental unit to issue bonds. 135 ALR 768.

11-2305. (5278.5) **Form of bonds.** All bonds hereafter issued by any city or town shall be either amortization bonds or serial bonds, and all things being equal amortization bonds shall be issued in preference to serial bonds, otherwise serial bonds may be issued.

The term "amortization bonds," as used in this act, is hereby defined as meaning that form of bond on which a part of the principal is required to be paid each time interest becomes due and payable, which part payment of principal increases with each following installment in the same amount the interest payment decreases, so that the combined amount payable on both principal and interest is the same on each interest payment date; provided, however, that the final payment may vary in amount from the other payments to the extent resulting from disregarding fractional cents in the other payments.

The term "serial bond," as used in this act, is hereby defined as being a bond issue payable in equal annual installments, one (1) installment consisting of one (1) or more bonds, becoming due and payable each year, the amount to be paid and redeemed each year being determined by dividing the total amount of the bonds to be issued by the total number of years the issue is to run, so that the total amount of principal to be paid each year the bonds are to run will be the same; provided, however, that the payments becoming due the first year, or the first and second years, may vary in amount from the other payments to the extent resulting from fixing the amount of each bond of the other payments at one hundred dollars ($100.00), five hundred dollars ($500.00), or some multiple thereof.

History: En. Sec. 5, Ch. 160, L. 1931; amd. Sec. 2, Ch. 152, L. 1953.

Collateral References

Municipal Corporations⇐923.

64 C.J.S. Municipal Corporations § 1935.

43 Am. Jur. 356, Public Securities and Obligations, § 106 et seq.

Power and discretion of officer or board authorized to issue bonds of governmental unit as regards terms or conditions to be included therein. 119 ALR 190.

11-2306. (5278.6) **Petition for election — form — proof.** No bonds shall be issued by a city or town for any purpose, except to fund or refund warrants or bonds issued prior to and outstanding on July first, 1942, as authorized in section 11-2301, unless authorized at a duly called special or general election at which the question of issuing such bonds was submitted to the qualified electors of the city or town, and approved, as hereinafter provided, and no such election shall be called unless there has been presented to the city or town council a petition, asking that such election be held and question submitted, signed by not less than twenty per centum (20%) of the qualified electors of the city or town who are taxpayers upon property within such city or town and whose names appear on the last completed assessment roll for state and county taxes, as taxpayers within such city or town. Every petition for the calling of an election to vote upon the question of issuing bonds shall plainly and clearly state the purpose or purposes for which it is proposed to issue such bonds, and shall contain an estimate of the amount necessary to be issued for such purpose or purposes. There may be a separate petition for each purpose, or two (2) or more purposes may be combined in one (1) petition, if each purpose with an estimate of the amount of bonds to be issued therefor is separately stated in such petition. Such petition may consist of one (1) sheet, or of several sheets identical in form and fastened together, after being circulated and signed, so as to form a single complete petition before being delivered to the city or town clerk, as hereinafter provided. The petition shall give the street and house number, if any, and the voting precinct of each person signing the same.

Only persons who are qualified to sign such petitions shall be qualified to circulate the same, and there shall be attached to the completed petition the affidavit of some person who circulated, or assisted in circulating, such petition, that he believes the signatures thereon are genuine and that the signers knew the contents thereof before signing the same. The completed petition shall be filed with the city or town clerk who shall, within fifteen (15) days thereafter, carefully examine the same and the county records showing the qualifications of the petitioners, and attach thereto a certificate, under his official signature, which shall set forth:

(1) The total number of persons who are registered electors and whose names appear upon the last completed assessment roll for state and county taxes, as taxpayers within such city or town.

(2) Which, and how many of the persons whose names are subscribed to such petition, are possessed of all of the qualifications required of signers to such petition.

(3) Whether such qualified signers constitute more or less than twenty per centum (20%) of the registered electors whose names appear upon

the last completed assessment roll for state and county taxes, as taxpayers within such city or town.

History: En. Sec. 6, Ch. 160, L. 1931; amd. Sec. 2, Ch. 108, L. 1937; amd. Sec. 2, Ch. 15, L. 1943.

Collateral References

Municipal Corporations⇐918 (1).

64 C.J.S. Municipal Corporations § 1920 et seq.

43 Am. Jur. 33, Public Securities and Obligations §§ 77 et seq.

Prohibition to control action of administrative officers in matters relating to bonds. 115 ALR 22 and 159 ALR 627.

Statutory provision as to manner and time of notice as mandatory or directory. 119 ALR 661.

11-2307. (5278.7) **Consideration of petition—calling election.** When such petition has been filed with the city or town clerk and he has found it has a sufficient number of signers qualified to sign the same, he shall place the same before the city or town council at its first meeting held after he has attached his certificate thereto. The council shall thereupon examine such petition and make such other investigation as it may deem necessary.

If it is found the petition is in proper form, bears the requisite number of signatures of qualified petitioners, and is in all other respects sufficient, the council shall pass and adopt a resolution which shall recite the essential facts in regard to the petition and its filing and presentation, the purpose or purposes for which the bonds are proposed to be issued, and fix the exact amount of bonds to be issued for each purpose, which amount may be less than but must not exceed the amount set forth in the petition, determine the number of years through which such bonds are to be paid, not exceeding the limitations fixed in section 11-2303, and making provision for having such question submitted to the qualified electors of the city or town at the next general city or town election, or at a special election which the council may call for such purpose.

History: En. Sec. 7, Ch. 160, L. 1931.

11-2308. (5278.8) **Notice of election—election hours—election officers.** Whether such election is held at the general city or town election, or at a special election, separate notice shall be given thereof. Such notice shall state the date when such election will be held, the hours between which the polls will be open, the amount of bonds proposed to be issued, the purpose thereof, the term of years through which the bonds will be paid, and such other information regarding the election and the proposed bonds as the board may deem proper. If the bonds proposed to be issued are for two (2) or more purposes, each purpose and the amount thereof must be separately stated. Such notice shall be posted in each voting precinct in the city or town at least ten (10) days prior to the date for holding such election, and must also be published once a week for a period of not less than two (2) consecutive weeks immediately preceding the date for holding such election in some newspaper published in the city or town, if there be one, and if not then in a newspaper published in the state at a point in the state nearest to the city or town, and designated by the city or town council.

If the question of issuing bonds is submitted at a special election called for such purpose, the city or town council shall fix the hours through which the polls are to be kept open, which shall be not less than eight (8),

and which must be stated in the notice of election, and may appoint a smaller number of judges than is required at a general city or town election, but in no case shall there be less than three (3) judges in a precinct and such judges shall act as their own clerks.

If the question of issuing bonds is submitted at a general city or town election, the polls shall be kept open during the same hours as are fixed for the general election and the judges and clerks for such general election shall act as the judges and clerks thereof.

History: En. Sec. 8, Ch. 160, L. 1931.

NOTE.—See section 23-1203 for hours of special election.

Collateral References

Inclusion or exclusion of first and last days in computing time for giving notice of bond issue election, which must be given a certain number of days before a known future date. 98 ALR 2d 1390.

11-2309. (5278.9) **Form of ballots and conduct of election.** Whenever the question of issuing bonds is submitted at either a general city or town election, or at a special election, separate ballots shall be provided therefor. Such ballots shall be white in color and of convenient size, being only large enough to contain the printing herein required to be done and placed thereon, and shall have printed thereon in fair-sized, legible type and black ink, in one (1) line or more, as required, the word "FOR" (stating the proposition and the terms thereof explicitly and at length), and thereunder the word "AGAINST" (stating the proposition and terms in like manner as above); and there shall be before the word "FOR" and before the word "AGAINST," each, a square space of sufficient size to place a plain cross or X therein, and such arrangement shall be in the following manner:

☐ FOR (stating the proposition)
☐ AGAINST (stating the proposition)

If bonds are sought to be issued for two (2) or more separate purposes, then separate ballots must be provided for each purpose or proposition.

The election shall be conducted, and the returns made, in the same manner as other city or town elections; and all election laws governing city and town elections shall govern, in so far as they are applicable, but if such question be submitted at a general city or town election the votes thereon must be counted separately and separate returns must be made by the judges and clerks at such election. Returns must be made separately for each proposition or question submitted at such election.

History: En. Sec. 9, Ch. 160, L. 1931.

Details of Proposed Work Not Required on Ballot

In submitting to the voters of a city the question whether bonds of the city shall be issued to defray the expense of erecting a public building, part of which was to be borne by the federal government, details of the work need not appear upon the ballot, so long as the resolution of the city council calling the election contained full details; in the instant case it was shown that copies of the resolution were posted in three public places in each voting precinct, numerous public meetings were had, and voters desiring additional information had means at hand for obtaining it. Lloyd v. City of Great Falls, 107 M 442, 454, 86 P 2d 395.

Collateral References

Municipal Corporations⇨918 (4).

64 C.J.S. Municipal Corporations §§ 1927, 1928.

Statement regarding cost of proposed public improvement in ballot for special election in that regard. 117 ALR 892.
Effect of delay after authorization by voters on power of governmental unit to issue bonds. 135 ALR 768.
Absentee voters' laws as applied to municipal bond elections. 97 ALR 2d 272.

11-2310. (5278.10) **Who are entitled to vote—registration of electors.** Only such registered electors of the city or town whose names appear upon the last preceding assessment roll for state and county taxes, as taxpayers upon property within the city or town, shall be entitled to vote upon any proposition of issuing bonds by the city or town. Upon the adoption of the resolution calling for the election the city or town clerk shall notify the county clerk of the date on which the election is to be held and the county clerk must cause to be published in the official newspaper of the city or town, if there be one, and if not in a newspaper circulated generally in the said city or town and published in the county where the said city or town is located, a notice signed by the county clerk stating that registration for such bond election will close at noon on the fifteenth (15th) day prior to the date for holding such election and at that time the registration books shall be closed for such election. Such notice must be published at least five (5) days prior to the date when such election books shall be closed.

After the closing of the registration books for such election the county clerk shall promptly prepare lists of the qualified electors of such city or town who are taxpayers upon property therein and whose names appear on the last completed assessment roll for state, county and school district taxes and who are entitled to vote at such election and shall prepare precinct registers for such election as provided in section 23-515 and deliver the same to the city or town clerk who shall deliver the same to the judges of election prior to the opening of the polls. It shall not be necessary to publish or post such lists of qualified electors.

History: En. Sec. 10, Ch. 160, L. 1931; amd. Sec. 1, Ch. 182, L. 1939; amd. Sec. 17, Ch. 64, L. 1959.

Collateral References
Elections⇐83, 106, 109.
29 C.J.S. Elections §§ 29, 39, 46, 47.

11-2311. (5278.11) **Percentage of voters required to authorize the issuing of bonds.** Wherever the question of issuing bonds for any purpose is submitted to the qualified electors of a city or town, at either a general or special election, not less than forty per centum (40%) of the qualified electors entitled to vote on such proposition or question must vote thereon, otherwise such proposition shall be deemed to have been rejected; provided, however, that if forty per centum (40%) or more of such qualified electors do vote on such proposition or question at such election, and a majority of such votes shall be cast in favor of such question or proposition, then such proposition or question shall be deemed to have been adopted and approved.

History: En. Sec. 11, Ch. 160, L. 1931.

11-2312. (5278.12) **Canvass of election returns—resolution for bond issue.** If the bonding election is held at the same time as a general city or town election, then the returns shall be canvassed by the city or town council at the same time as the returns from such general election; but if

the question of issuing bonds is submitted at a special election then the city or town council shall meet within ten (10) days after the date of holding such special election and canvass the returns. If it is found that at such election forty per centum (40%) or more of the qualified electors of the city or town entitled to vote on such question or proposition voted thereon, and that a majority of such votes were cast in favor of the issuing of such bonds, the city or town council shall, at a regular or special meeting held within thirty (30) days thereafter, pass and adopt a resolution providing for the issuance of such bonds. Such resolution shall recite the purpose for which such bonds are to be issued, the amount thereof, the maximum rate of interest the bonds may bear, the date they shall bear, the period of time through which they shall be payable, and that any thereof may be redeemed in full, at the option of the city or town, on any interest payment date from and after ten (10) years from the date of issue; and provide for the manner of the execution of the same. It shall provide that preference shall be given amortization bonds but shall fix the denomination of serial bonds in case it shall be found advantageous to issue bonds in that form, and shall adopt a form of notice of the sale of the bonds.

The board may, in its discretion, provide that such bonds may be issued and sold in two (2) or more series or installments.

History: En. Sec. 12, Ch. 160, L. 1931.

NOTE.—See note to section 11-2304 relative to implied amendment of this section as to time for redemption of bonds.

11-2313. (5278.13) **Form of notice of sale of bonds.** The notice of sale shall state the purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose and shall be substantially in the form following:

NOTICE OF SALE OF (CITY OR TOWN) BONDS

Notice is hereby given by the council of the (city or town) of ...., Montana, that the said council will, on the ..... day of ...., 19...., at the hour of ..... o'clock ....m., at its council chamber in the (city or town) of ....., Montana, sell to the highest and best bidder for cash, either amortization or serial bonds of the said (city or town) in the total amount of ..... dollars, ($.....), for the purpose of .....

Amortization bonds will be the first choice and serial bonds will be the second choice of the council.

If amortization bonds are sold and issued the entire issue may be put into one (1) single bond or divided into several bonds, as the council may determine upon at the time of sale, both principal and interest to be payable in semiannual installments during a period of ..... years from the date of issue.

If serial bonds are issued and sold they will be in the amount of .... dollars ($.....), each, except the last bond which will be in the amount of ..... dollars ($.....); the sum of ..... dollars ($.....) of said serial bonds will become due and payable on the ..... day of ..... 19...., and a like amount on the same day each

year thereafter until all such bonds are paid, except that the last install ment will be in the amount of ..... dollars ($.....).

The said bonds, whether amortization or serial bonds, will bear date of ..... 19...., will bear interest at a rate not exceeding six per centum (6%) per annum, payable semiannually, on the ..... day of ..... and on the ..... day of ....., in each year, and will be redeemable (Here insert the optional provisions, if any, recited in the bonds).

Said bonds will be sold for not less than their par value with accrued interest to date of delivery and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The council reserves the right to reject any and all bids and to sell said bonds at private sale.

All bids other than by or on behalf of the state board of land commissioners of the state of Montana must be accompanied by a certified check in the sum of ..... dollars, payable to the order of the (city or town) clerk, which will be forfeited by the successful bidder in the event he shall fail or refuse to complete the purchase of said bonds in accordance with the terms of his bid.

All bids shall be addressed to the council of the (city or town) of ....., and delivered to the clerk of said (city or town).

.....
Mayor of the (city or town) of
....., Montana

ATTEST:

.....
(City or Town) Clerk.

History: En. Sec. 13, Ch. 160, L. 1931.

Collateral References

Municipal Corporations⇐921 (1).
64 C.J.S. Municipal Corporations § 1930 et seq.

11-2314. (5278.14) **Publication of notice of sale.** The city or town council or commission shall cause such notice to be published one in each calendar week in each of the four successive calendar weeks (4 publications) immediately preceding the week which contains the date of sale, in a newspapr of general circulation printed and published, if there be one, and if not then in a newspaper of general circulation, in said city or town, printed and published in the county in which said city or town is located; and the council or commission may, in its discretion, cause such notice to be published in such other newspaper or newspapers published either within or without the state as in the opinion of the council or commission will be most likely to give notice of such sale to prospective bidders. The city or town clerk must, at least fifteen (15) days before the date fixed for the sale of general obligation bonds only, send a copy of such published notice to the secretary of the state board of land commissioners, and shall thereupon furnish to the said secretary a transcript of the proceedings had for the issuance of general obligation bonds only, and such other information relating thereto as the secretary may find necessary.

History: En. Sec. 14, Ch. 160, L. 1931; amd. Sec. 1, Ch. 38, L. 1955.

11-2315. (5278.15) **Sale of bonds.** The city or town council shall meet at the time and place fixed in the notice to consider bids for the bonds. The bonds shall be sold at not less than par and accrued interest to date of delivery, and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have the preference over a bid for serial bonds, all other things being equal; and in determining the kind of bonds to be issued the council shall take into consideration not only the rate of interest demanded on each kind but also all other known elements affecting the interests of the city or town, and the council shall accept the bid they shall judge most advantageous to the city or town; provided, that no bid shall be accepted which will require the bonds to bear a rate of interest exceeding six per centum (6%) per annum. No attorneys fees, brokerage or other fees or commissions of any kind shall be paid to any person or corporation for assisting in the proceedings, or in the preparation of the bonds, or in negotiating the sale thereof. The board is authorized to reject any and all bids and to sell the bonds at private sale if they deem it for the best interests of the city or town, provided, however, that such bonds shall not bear a greater rate of interest than six per centum (6%) per annum and shall not be sold at less than par and accrued interest to date of delivery.

History: En. Sec. 15, Ch. 160, L. 1931.

Private Sale of Bonds

Under this section, authorizing the city council to reject all bids for municipal bonds and to sell them at private sale when it deems it best for the interests of the city, a city may contract to exchange such bonds at their face value for work incident to the construction of a water system at an agreed valuation, the price of the work being determined by a bid which is accepted, such an arrangement being tantamount to a "sale" of the bonds. Commonwealth Public Service Co. v. City of Deer Lodge, 96 M 48, 65, 29 P 2d 667.

Collateral References

Sale of municipal or other public bonds at less than par or face value. 91 ALR 7 and 162 ALR 396.

Bid for municipal bond issue, rights and obligations arising out of. 139 ALR 1047.

11-2316. (5278.16) **Form and execution of bonds.** At the time of the sale of the bonds, or at a meeting held thereafter, the city or town council shall prescribe the form of the bonds whether amortization or serial bonds, and of the coupons to be attached thereto. Each and every bond and every coupon attached thereto must be signed by the mayor of the city or town, by the treasurer thereof, and must be attested by the city or town clerk, and each bond shall have the city or town seal affixed thereto.

History: En. Sec. 16, Ch. 160, L. 1931; amd. Sec. 6, Ch. 260, L. 1959.

Collateral References

43 Am. Jur. 356, Public Securities and Obligations, § 106 et seq.

11-2317. (5278.17) **Printing of the bonds.** Under the direction of the council, the city or town clerk shall cause the bonds, with coupons attached thereto, to be printed or lithographed, at the expense of the city or town at lowest commercial rates; provided, however, that a purchaser of such bonds may furnish the same to the city or town, in the form prescribed by the council, for execution, if the same is done at his own expense and without cost or expense to the city or town.

History: En. Sec. 17, Ch. 160, L. 1931.

Collateral References
Municipal Corporations⇐929.
64 C.J.S. Municipal Corporations § 1948.

11-2318. (5278.18) **Registration of bonds — copy to be preserved.** When duly executed by the officers of the city or town, as herein provided, the bonds shall be registered by the city or town treasurer in a book provided for that purpose before being delivered to the purchaser. Such registration shall show the number and amount of each bond, the date of issue, date redeemable and date when the same will become due, the amount of all payments of both principal and interest required to be made on each bond with the dates when the same are required to be made and the name and address of the purchaser. The city or town clerk shall also deliver to the city or town treasurer an unsigned and canceled printed copy of one of the bonds, as so issued and registered, to be preserved in his office.

History: En. Sec. 18, Ch. 160, L. 1931.

11-2319. (5278.19) **Delivery of bonds—payment for same—use of proceeds.** In case the state board of land commissioners is the purchaser of the bonds, the city or town treasurer shall forward the registered bonds to the secretary of the board who shall cause the same to be delivered to the state treasurer and payment therefor shall be made in the manner provided by law. In case the bonds are purchased by other investors the city or town treasurer shall deliver the bonds to the purchaser upon receiving full payment therefor. All moneys arising from the sale of such bonds shall be paid to the city or town treasurer and shall be immediately available for the purpose or purposes for which the bonds were issued and for no other purpose.

History: En. Sec. 19, Ch. 160, L. 1931.

11-2320. (5278.20) **Liability on bonds.** All bonds issued under the provisions of this act shall be legal and valid obligations of the city or town issuing the same and the full faith and credit of such city or town are hereby irrevocably pledged for the prompt payment of both principal and interest thereof as the same become due.

History: En. Sec. 20, Ch. 160, L. 1931.

Collateral References
Municipal Corporations⇐397.
64 C.J.S. Municipal Corporations §§ 1956, 1961.

Validity of municipal bond issue as against owners of property annexation of which to municipality became effective after date of election at which issue was approved by voters. 10 ALR 2d 559.

11-2321. (5278.21) **Treasurer's certificate as to principal and interest.** Whenever any city or town has any issue or series of bonds outstanding and there is not sufficient funds on hand available for the payment of the full amount of the interest and principal thereof, the city or town treasurer shall, between the first and fifteenth days of July, in each year, while such bonds or any of them remain outstanding, and unpaid, make out and deliver to the city or town clerk, to be by him presented to the city or town council at their next meeting, a statement showing the amount required to be raised by tax levy during the then current fiscal

year, for payment of interest and principal becoming due and payable during such fiscal year, or within ninety days thereafter, on each issue or series of bonds outstanding, or if no part of the principal of any such issue or series of bonds outstanding, or if no part of the principal of any such issue or series of bonds will become due and payable within such time, then such statement shall show the amount required to be raised by tax levy during such year for payment of interest becoming due during such time, and to place the proper amount in the sinking fund for the payment of the principal of such bonds when they become due, as provided in section 11-2320.

History: En. Sec. 21, Ch. 160, L. 1931.

Collateral References

Municipal Corporations⇐953.

64 C.J.S. Municipal Corporations § 1955.

11-2322. (5278.22) **Tax.** The city or town council, at the time of making the levy of taxes for general city or town purposes, must levy a separate and special tax, upon all taxable property in the city or town, for the payment of interest on the principal of each series or issue of bonds outstanding, and the tax levy for any one series or issue of bonds must be entirely separate and distinct from such levy for any other issue or series of bonds. The levy made for the purpose of paying interest on and principal of each series or issue of bonds must be high enough to raise an amount sufficient to pay all interest on and so much of the principal, if any, of such bonds as will become due and payable during the then current fiscal year, or within ninety days thereafter, as such amount is shown by the treasurer's statement provided for by section 11-2321; and if no part of the principal of such bonds will become due and payable within such time, then such tax levy must be high enough to raise an amount sufficient to pay all interest which will become due and payable during the current fiscal year or within ninety days thereafter, and to also place in the sinking fund for such issue or series of bonds, for the payment of the principal thereof when the same become due, an amount not less than a sum produced by dividing the whole amount for which such series or issue of bonds were originally issued by the number of years for which such series or issue of bonds were originally issued to run, as such amounts are shown by the treasurer's statement provided for by section 11-2321.

History: En. Sec. 22, Ch. 160, L. 1931.

Collateral References

Municipal Corporations⇐964, 965.

64 C.J.S. Municipal Corporations §§ 1997, 1998.

11-2323. (5278.23) **Liability of members of council.** If the council of any city or town shall fail, neglect or refuse in any year to make a levy sufficient to pay the interest on and principal of any issue or series of bonds, as required by the provisions of section 11-2322, the holder of any bond of such issue or series, or any taxpayer paying taxes on property situated in such city or town, may apply to the district court of the county, in which the city or town issuing such bonds is situated, for a writ of mandate to compel the city or town council to make a proper and sufficient levy for such purposes, and if, upon the hearing of such application it shall appear to the satisfaction of the court that the city or town council

has failed, neglected or refused to make any levy whatever for such purposes, or has made a levy, but that the same is insufficient to raise the amount required to be raised for such purposes under the provisions of section 11-2322, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and requiring such city or town council, at the next meeting thereof for the purpose of making and fixing city or town levies, to make and fix a tax levy against all taxable property in such city or town sufficient to raise the amount of such deficiency, which levy shall be in addition to the levy required to be made for the then current fiscal year; provided, that any costs which may be allowed or awarded the petition in any such proceeding shall be paid by the members of the city or town council and shall not be a charge against the city or town.

History: En. Sec. 23, Ch. 160, L. 1931.

Collateral References

Mandamus⇨115.
55 C.J.S. Mandamus § 182.

11-2324. (5278.24) **Bond funds.** The city or town treasurer shall keep in his books a special and separate sinking and interest fund account for each issue or series of bonds issued by his city or town, and outstanding, and each such fund must at all times show the exact condition thereof. All taxes collected for interest and principal on city or town bonds shall be placed to the credit of the sinking and interest fund for which the same were levied, and such fund shall not be used for any purpose other than payment of the principal and interest on such bonds so long as any of such bonds remain outstanding. When all bonds of any series or issue, with the interest thereon, have been fully paid, or called in for payment, and there remains in the sinking and interest fund for such series or issue any amount not required for the payment of such bonds and interest, such excess amount, and all amounts subsequently collected for such fund, shall be transferred to the general fund of the city or town or to the sinking and interest fund of any other issue or series of bonds outstanding, that the city or town council may designate.

History: En. Sec. 24, Ch. 160, L. 1931.

Collateral References

Municipal Corporations⇨887, 951.
64 C.J.S. Municipal Corporations §§ 1884, 1954.

11-2325. (5278.25) **Payment of principal and interest.** The city or town treasurer shall pay from the proper sinking and interest fund the interest and principal of each issue or series of outstanding bonds, as such interest and principal become due and at the place where such bonds are payable, upon presentation and surrender of the coupon or coupons, bond or bonds to be paid; provided, however, that if the bonds are held by the state of Montana, then all such payments shall be made at the office of the state treasurer, who shall cancel the coupons, or bonds, and return the same to the city or town treasurer together with his receipt therefor.

Any and all installments of interest or principal of bonds issued under the provisions of this act, not promptly paid when due, shall draw interest

at the rate of six per centum (6%) per annum from the date due until actually paid, irrespective of the rate of interest on the bonds themselves.

History: En. Sec. 25, Ch. 160, L. 1931.

Collateral References

Municipal Corporations⇐953, 954.
64 C.J.S. Municipal Corporations § 1955.

11-2326. (5278.26) **Redemption of bonds before maturity.** Whenever there is available money in any sinking and interest fund, over and above the amount required for payment of principal and interest becoming due on the next interest payment date, sufficient to pay and redeem one or more of the outstanding bonds of the issue or series to which such sinking and interest fund belongs, and such bonds are held by the state of Montana, the city or town treasurer must apply such available money in payment of as many of such bonds as the same will pay. Not less than fifteen (15) days before the next interest payment date the city or town treasurer must give notice to the state board of land commissioners that on such interest payment date such bond or bonds will be paid, and the city or town treasurer, before such interest payment date, must remit to the state treasurer the amount required to pay such bond or bonds, with the interest thereon. Upon receipt of such amount the state treasurer must cancel such bond or bonds and all unpaid interest coupons attached thereto, and return the same, with his receipt, to the city or town treasurer.

Whenever there is available money in any sinking and interest fund, over and above the amount required for payment of principal and interest becoming due on the next interest payment date, sufficient to pay and redeem one or more of the outstanding optional bonds of the issue or series to which such sinking and interest fund belongs, and which bonds are not yet due but are then redeemable, or will become redeemable on the next interest payment date, and such bonds are not held by the state of Montana, the city or town treasurer must apply such available money in payment and redemption of as many of such bonds as the same will pay and redeem. The city or town treasurer must give notice to the holder of such bond or bonds, if known to him, or to any bank or financial institution at which such bonds are payable, at least fifteen (15) days before the next interest payment date, that such bonds will be redeemed and paid on such date. The city or town treasurer must also publish in some newspaper of general circulation printed and published in the city or town, and if there be none, then in some newspaper of general circulation in such city or town, printed and published in the county in which such city or town is situated, once a week for two successive weeks immediately preceding such interest payment date, a notice that such bond or bonds have been called in for redemption and will be paid in full on such interest payment date. If such bonds are payable at some bank or financial institution the city or town treasurer must remit to such bank or institution, before such interest payment date, an amount sufficient to pay and redeem such bonds. If such bonds are not presented for redemption and payment on such interest payment date interest thereon shall cease on such date.

All bonds paid and redeemed under the provisions of this section must

be paid and redeemed in the numerical order in which the same were issued.

History: En. Sec. 26, Ch. 160, L. 1931.

Mandamus Does Not Lie To Compel Payment out of Order

Where a town ordinance directing that water bonds be issued and be absolutely due and payable in series set forth in a schedule showing on what day each should be payable, and the holder of bond No. 13 sought by writ of mandate to compel payment thereof when bonds numbered 1 to 12 also were due and unpaid, held, that purchasers of municipal bonds are charged with notice of the contents of ordinances under which they were issued, as well as by those of the bonds themselves, and that all such bonds were required to be paid in the order of their serial numbers, and such holder was not entitled to prevail. State ex rel. Mueller v. Todd, 114 M 35, 40, 132 P 2d 154.

Collateral References

Municipal Corporations⇐951.

64 C.J.S. Municipal Corporations § 1954.

43 Am. Jur., Public Securities and Obligations, p. 393, § 12; p. 482, § 271 et seq.

Permissive or mandatory character of legislation in relation to payment of public debts. 103 ALR 812.

Right to call governmental bonds in advance of their maturity. 109 ALR 988.

11-2327. (5278.27) **Investment of sinking and interest fund.** Whenever there is available money in any sinking or interest fund, over and above the amount required for payment of principal and interest becoming due on the next interest payment date, sufficient to pay and redeem one or more outstanding bonds of the issue or series to which such sinking fund belongs, and such bonds are not held by the state of Montana, and are not subject to redemption, the city or town treasurer, at the direction of the city or town council, shall purchase such bond or bonds of such issue or series, if this can be done at not more than par and accrued interest, or at such reasonable premium as the council may feel justified in paying, not in any case exceeding five per centum (5%).

If the council cannot purchase any of the outstanding bonds at such reasonable price, then such available money in such sinking and interest fund shall be invested by the city or town treasurer, under the direction of the city or town council, in other bonds of the city or town, in warrants of the city or town, in warrants issued by any county of this state, in bonds or warrants of this state, or in bonds or treasury certificates of the United States; provided, however, that such sinking and interest funds shall only be invested in such securities as will become due and payable at least thirty (30) days before the date when the bonds of the city or town of such series will become redeemable.

History: En. Sec. 27, Ch. 160, L. 1931.

Collateral References

Municipal Corporations⇐884, 951.

64 C.J.S. Municipal Corporations §§ 1881, 1955.

Liability of officer for loss of sinking fund through failure of bank. 25 ALR 1358.

Constitutionality, construction, and application of statute empowering municipal corporations to issue bonds the proceeds of which shall be invested in municipal securities. 108 ALR 736.

11-2328. (5278.28) **Cancellation of bonds, coupons and warrants.** All bonds and interest coupons paid by the city or town treasurer from time to time shall be canceled by him, and he shall enter on the records of the registration of such bonds the date of the payment of the same and the several coupons attached thereto, and he shall deliver the same, after such cancellation, to the city or town clerk, with a report showing the numbers of such bonds and the amounts paid as principal and interest

thereon, and the city or town clerk shall exhibit such bonds and coupons, with such report, to the city or town council at the next regular meeting thereof.

Whenever bonds are issued for the purpose of funding outstanding warrants or refunding outstanding bonds it shall be the duty of the city or town treasurer to apply the proceeds derived from the sale of such bonds to the payment of such warrants or bonds so refunded or funded, and he shall, upon taking up such warrants or bonds, cancel the same, keep a record thereof, and deliver the same to the city or town clerk, with a report showing the numbers thereof and the amounts paid for principal and interest, and the city or town clerk shall exhibit such warrants or bonds, with such report, to the city or town council at the next regular meeting thereof.

History: En. Sec. 28, Ch. 160, L. 1931.

11-2329. (5278.29) **Exchange of bonds for amortization bonds.** Subject to the approval of the state board of land commissioners the council of any city or town is hereby authorized to issue amortization bonds for the purpose of refunding any outstanding bonds of such city or town held by the state of Montana and which were not issued either as amortization or serial bonds, and to exchange the same for such outstanding bonds. Such amortization bonds shall conform in all respects to the definition of amortization bonds as set forth in section 11-2305, and shall bear interest at such rate as may be agreed upon between the council of such city or town and the state board of land commissioners, but which shall not exceed six per centum (6%) per annum. Such amortization bonds may be issued and exchanged for such outstanding bonds without submitting the question of issuing the same at an election, and it shall not be necessary to publish any notice of sale of such bonds. This section shall not be construed so as to deprive city or town councils of the rights to advertise, sell and issue refunding bonds in the manner provided in this act.

History: En. Sec. 29, Ch. 160, L. 1931.

Collateral References

Municipal Corporations⇐913.
64 C.J.S. Municipal Corporations § 1910.

Cross-Reference

Refunding municipal bonds, secs. 79-1901 to 79-1916.

11-2330. (5278.30) **Application of this act to outstanding bonds.** All of the provisions of this act with reference to the payment of principal and interest of bonds, redemption and payment thereof, investment of sinking and interest funds, levy of taxes for payment of principal and interest, maintenance of separate sinking and interest funds, and all other provisions of this act which can be made applicable thereto, shall apply to all bonds heretofore lawfully issued by any city or town under any law or laws of this state, and which bonds shall be outstanding at the time this act takes effect, providing, however, that this act shall not in any manner be held to apply to bonds or warrants heretofore issued under the laws of Montana providing for special improvement district bonds of cities and towns in the state of Montana, and particularly under the provisions of sections 11-2201 through 11-2268.

History: En. Sec. 30, Ch. 160, L. 1931.

CHAPTER 24

MUNICIPAL REVENUE BOND ACT OF 1939

Section 11-2401. Short title of act.
11-2402. Definitions.
11-2403. Additional powers of municipalities.
11-2404. Authorization of undertaking—form and contents of bonds.
11-2405. Covenants in resolution authorizing issuance of bonds.
11-2406. Validity of bonds.
11-2407. Lien of bonds.
11-2408. Bonds not a general obligation of municipality.
11-2409. Undertakings to be self-supporting.
11-2410. Use of revenue.
11-2411. Consent of another municipality.
11-2412. Consent of state agencies.
11-2413. Construction of act.
11-2414. Refunding revenue bonds.

11-2401. Short title of act. This act may be cited as "The Municipal Revenue Bond Act of 1939."

History: En. Sec. 1, Ch. 126, L. 1939.

Act Not Impliedly Repealed by This Act

Chapter 141, Laws 1935 (omitted), authorizing municipalities to create self-supporting undertakings in the nature of furnishing facilities, inter alia, for the distribution of natural gas, and providing for the issuance of bonds, etc., held, not impliedly repealed by this chapter. Montana-Dakota Utilities Co. v. City of Havre, 109 M 164, 171, 94 P 2d 660.

11-2402. Definitions. Whenever used in this act, unless a different meaning clearly appears from the context:

(a) The term "undertaking" shall mean any one or a combination of the following: water, and sewerage systems, together with all parts thereof and appurtenances thereto including, but not limited to, supply and distribution systems, reservoirs, dams, sewage treatment, disposal works, public airport construction and public airport building; or other revenue producing facilities and services authorized in these codes for cities and towns.

(b) The term "municipality" shall include any city or any town, however organized.

(c) The term "governing body" shall include bodies and boards, by whatsoever names they may be known, having charge of finances and management of a municipality.

History: En. Sec. 2, Ch. 126, L. 1939; amd. Sec. 1, Ch. 42, L. 1949; amd. Sec. 1, Ch. 111, L. 1959.

Collateral References

Municipal Corporations⇐911.
64 C.J.S. Municipal Corporations § 1907.

11-2403. Additional powers of municipalities. In addition to the powers which it may now have, any municipality shall have power under this act: (a) To construct, acquire by gift, purchase, or the exercise of the right of eminent domain, reconstruct, improve, better or extend any undertaking, within or without the municipality, or partially within or partially without the municipality, and to acquire by gift, purchase, or the exercise of the right of eminent domain, lands or rights in land or water rights in connection therewith, (b) to operate and maintain any undertaking and furnish the service, facilities and commodities thereof for its own use and for the use of public and private consumers within or without the

territorial boundaries of such municipality, (c) to issue its bonds to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking, and/or to refund bonds issued for any of the foregoing purposes, whether issued under authority of this chapter or of any other applicable law, (d) to prescribe and collect rates, fees, and charges for the services, facilities and commodities furnished by such undertaking, (e) to enter into co-operative agreements with and accept contributions from industrial establishments relative to the planning, construction, lease or other acquisition, maintenance and operation of undertakings, and to apply for and accept grants and loans or any other aid which the United States of America or any agency thereof may give or make to any political subdivision or agency of this state for undertakings, including all necessary actions preliminary thereto, the purpose of which is to aid in the prevention or abatement of water pollution, and to make contracts and execute instruments containing such terms, provisions and conditions as, in the discretion of the governing body of the municipality, may be necessary, proper or advisable for the purpose of obtaining such aid, (f) to enter into and perform contracts, whether long-term or short-term, with any industrial establishment for the provisions and operation by the municipality of sewerage facilities when the governing body of such municipality determines such action to be in the public interest and otherwise essential in order to abate or reduce the pollution of waters caused by discharges of industrial waste by such industrial establishment, and to provide for the periodical payment by said industrial establishment to the municipality of an amount at least sufficient, in the determination of such governing body, to compensate the municipality for the cost of providing (including the payment of principal and interest charges, if any) and of operating and maintaining the sewerage facilities serving such industrial establishment, and (g) to pledge to the punctual payment of said bonds issued under this act and interest thereon an amount of the revenues of such undertaking (including improvements, betterments, or extensions thereto thereafter constructed or acquired) or of any part of such undertaking, sufficient to pay said bonds, and interest as the same shall become due, and to create and maintain reasonable reserves therefor. Such amount may consist of all or any part or portion of such revenue. The governing body of the municipality in determining such cost, may include all costs and estimated costs of the issuance of said bonds, all engineering, inspection, fiscal and legal expenses, and interest which it is estimated will accrue during the construction period and for six (6) months thereafter on money borrowed or which it is estimated will be borrowed pursuant to this act. Any two or more municipalities through their respective governing bodies are hereby authorized and empowered to enter into and perform such contracts and agreements as they may deem proper for or concerning the planning, construction, lease or other acquisition and the finance of undertakings, in whole or in part, and the maintenance and operation thereof. Any such municipalities so contracting with each other may also provide in any contract or agreement for a board, commission or such other body as their governing bodies may deem proper for the supervision and gen-

eral management of the undertakings and for the operation thereof, and may prescribe its powers and duties and fix the compensation of the members thereof.

History: En. Sec. 3, Ch. 126, L. 1939; amd. Sec. 1, Ch. 52, L. 1949; amd. Sec. 1, Ch. 145, L. 1951.

Collateral References
Municipal Corporations⇐57, 911.
62 C.J.S. Municipal Corporations § 106; 64 C.J.S. Municipal Corporations § 1907.

11-2404. Authorization of undertaking—form and contents of bonds. The acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking may be authorized under this chapter, and bonds may be authorized to be issued under this chapter by resolution or resolutions of the governing body of the municipality, when authorized by a majority of the taxpayers voting upon such question at a special election noticed and conducted as provided in sections 11-2308 to 11-2310, inclusive, and said special election shall be held not later than the next municipal election held after the council or governing body of the municipality has by resolution or resolutions approved the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking as in this chapter provided and ordered said special election; provided, that the issuance of refunding revenue bonds may be authorized by resolution or resolutions of the governing body of the municipality without an election.

Said bonds shall bear interest at such rate or rates not exceeding six per centum (6%) per annum, payable semiannually, may be in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty (40) years from their respective dates, may be payable in such place or places, may carry such registration privileges, may be subject to such terms of redemption, may be executed in such manner, may contain such terms, convenants and conditions, and may be in such form, either coupon or registered, as such resolution or subsequent resolutions may provide. Said bonds shall be sold at not less than par. Said bonds may be sold at private sale to the United States of America or any agency, instrumentality or corporation thereof. Unless sold to the United States of America or agency, instrumentality or corporation thereof, said bonds shall be sold at public sale after notice of such sale published once at least five (5) days prior to such sale in a newspaper circulating in the municipality and in a financial newspaper published in the city of New York, New York, or the city of Chicago, Illinois, or the city of San Francisco, California, except that, in the event the bond issue is in an amount of less than one hundred fifty thousand dollars ($150,000), the bond issue shall be advertised at least five (5) days prior to such sale in daily newspapers circulating in Montana cities of 10,000 population or over, in lieu of advertising in a financial newspaper in New York, Chicago, or San Francisco, and also in a newspaper as specified in section 16-1201 if that newspaper is different from the daily newspapers circulating in Montana cities of 10,000 population or over. Pending the preparation of the definitive bonds, interim receipts or certificates in such form and with such provisions as the governing body may determine may be issued to the purchaser or purchasers of bonds sold pursuant to this chapter. Said

bonds and interim receipts or certificates shall be fully negotiable, as provided by the Uniform Commercial Code—Investment Securities.

History: En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963.

Compiler's Notes

This section was amended twice in 1963, once by Ch. 52, and once by Ch. 264. Neither amendatory act mentioned nor incorporated the changes made by the other. However, since the two amendments do not appear to conflict, the compiler has made a combined section incorporating both. It should be noted, however, that Ch. 264 did not take effect until January 1, 1965.

Section 16-1201, referred to in the second paragraph of this section, was repealed by Sec. 10, Ch. 280, Laws 1967. For similar provisions in current law, see sec. 16-1230.

Collateral References

Municipal Corporations⇐918 (1), 921 (1), 923, 926 (1).

64 C.J.S. Municipal Corporations §§ 1920, 1930, 1935, 1940.

11-2405. Covenants in resolution authorizing issuance of bonds. Any resolution or resolutions authorizing the issuance of bonds under this act may contain covenants as to (a) the purpose or purposes to which the proceeds of sale of said bonds may be applied and the use and disposition thereof, (b) the use and disposition of the revenue of the undertaking for which said bonds are to be issued, including the creation and maintenance of reserves, (c) the transfer from the general funds of the municipality to the account or accounts of the undertaking, an amount equal to the cost of furnishing such municipality or any of its departments, boards or agencies with the services, facilities and/or commodities of said undertaking, (d) the issuance of other or additional bonds payable from the revenue of said undertaking, (e) the operation and maintenance of such undertaking, (f) the insurance to be carried thereon and the use and disposition of insurance moneys, (g) books of account and the inspection and audit thereof, and (h) the terms and conditions upon which the holders of said bonds or any proportion of them or any trustee therefor shall be entitled to the appointment of a receiver by the district court, which court shall have jurisdiction in such proceedings, and which receiver may enter and take possession of said undertaking, operate and maintain the same, prescribe rates, fees, or charges, subject to the approval of the public service commission of Montana and collect, receive and apply all revenue thereafter arising therefrom in the same manner as the municipality itself might do. The provisions of this act and any such resolution or resolutions shall be enforceable by any bondholder, by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction.

History: En. Sec. 5, Ch. 126, L. 1939.

Collateral References

Municipal Corporations⇐917 (1).

64 C.J.S. Municipal Corporations § 1915 et seq.

11-2406. Validity of bonds. Said bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor any or all the persons whose signatures appear thereon shall have ceased to be officers of the municipality issuing the same. The validity of said bonds shall not be dependent on nor affected by the validity or regularity of any proceedings relating to the acquisition, purchase, con-

struction, reconstruction, improvement, betterment, or extension of the undertaking for which said bonds are issued. The resolution authorizing said bonds may provide that the bonds shall contain a recital that they are issued pursuant to this act, which recital shall be conclusive evidence of their validity and of the regularlity of their issuance.

History: En. Sec. 6, Ch. 126, L. 1939.

64 C.J.S. Municipal Corporations § 1942 et seq.

Collateral References

Municipal Corporations⇐931.

11-2407. Lien of bonds. The resolution or resolutions shall specify and define the revenues or portion thereof which are appropriated and pledged for the security and payment of the bond principal and interest and the relative security of liens on the revenues in favor of bonds of one or more series or issues, whether issued concurrently or at different times.

History: En. Sec. 7, Ch. 126, L. 1939; amd. Sec. 2, Ch. 52, L. 1949.

Collateral References

Municipal Corporations⇐950.

64 C.J.S. Municipal Corporations § 1957.

11-2408. Bonds not a general obligation of municipality. No holder or holders of any bonds issued under this act shall ever have the right to compel any exercise of taxing power of the municipality to pay said bonds or the interest thereon. Each bond issued under this act shall recite in substance that said bond, including interest thereon, is payable from the revenue pledged to the payment thereof, and that said bond does not constitute a debt of the municipality within the meaning of any constitutional or statutory limitation or provision.

History: En. Sec. 8, Ch. 126, L. 1939.

Collateral References

Pledge or appropriation of revenue from utility or other property in payment therefor, as indebtedness within constitutional or statutory limitation of indebtedness of municipality. 72 ALR 687; 96 ALR 1385 and 146 ALR 328.

Funding or refunding obligations as subject to conditions respecting limitation of indebtedness or approval by voters. 97 ALR 442.

11-2409. Undertakings to be self-supporting. The governing body of a municipality issuing bonds pursuant to this act shall prescribe and collect reasonable rates, fees or charges for the services, facilities and commodities of such undertaking, and shall revise such rates, fees or charges from time to time whenever necessary so that such undertaking shall be and always remain self-supporting. The rates, fees or charges prescribed shall be such as will produce revenue at least sufficient (a) to pay when due all bonds and interest thereon, for the payment of which such revenue is or shall have been pledged, charged or otherwise encumbered, including reserves therefor, and (b) to provide for all expenses of operation and maintenance of such undertaking, including reserves therefor.

History: En. Sec. 9, Ch. 126, L. 1939.

Collateral References

Disposition of revenues from operation of revenue-producing enterprise owned by municipal corporation. 103 ALR 579 and 165 ALR 854.

11-2410. Use of revenue. Any municipality issuing bonds pursuant to this act for the acquisition, purchase, construction, reconstruction, im-

provement, betterment or extension of any undertaking shall have the right to appropriate, apply or extend the revenue of such undertaking for the following purposes: (a) to pay when due all bonds and interest thereon, for the payment of which such revenue is or shall have been pledged, charged or otherwise encumbered, including reserves therefor, (b) to provide for all expenses of operation and maintenance of such undertaking, including reserves therefor, (c) to pay and discharge notes, bonds, or other obligations and interest thereon, not issued under this act for the payment of which the revenue of such undertaking is or shall have been pledged, charged or encumbered, (d) to pay and discharge notes, bonds or other obligations and interest thereon, which do not constitute a lien, charge or encumbrance on the revenue of such undertaking, which shall have been issued for the purpose of financing the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of such undertaking, and (e) to provide a reserve for betterments to such undertaking. Unless and until adequate provision has been made for the foregoing purposes, no municipality shall have the right to transfer the revenue of such undertaking to its general funds.

History: En. Sec. 10, Ch. 126, L. 1939.

11-2411. Consent of another municipality. No municipality shall construct an undertaking wholly or partly within the corporate limits of another municipality except with the consent of the governing body of such other municipality.

History: En. Sec. 11, Ch. 126, L. 1939.

Collateral References
Municipal Corporations⇐277.
63 C.J.S. Municipal Corporations § 1059.

11-2412. Consent of state agencies. It shall not be necessary for any municipality proceeding under this act to obtain any certificate of convenience or necessity, franchise, license, permit, or other authorization from any bureau, board, commission or other like instrumentality of the state in order to acquire, construct, purchase, reconstruct, improve, better, extend, maintain and operate an undertaking, but the supervisory powers and duties of the state board of health shall continue as heretofore.

History: En. Sec. 12, Ch. 126, L. 1939.

64 C.J.S. Municipal Corporations § 1915 et seq.

Collateral References
Municipal Corporations⇐917 (1).

11-2413. Construction of act. The powers conferred in this act shall be in addition and supplemental to the powers conferred by any other general, special or local law. The undertaking may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended, and bonds may be issued under this act for said purposes, notwithstanding that any general, special or local law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment, and extension of a like undertaking, or the issuance of bonds for like purposes, and without regard to the requirements, restrictions, limitations or other provisions contained in any other general, special or local law, including, but not limited to, any requirement for the approval by the voters of any munici-

pality. In so far as the provisions of this act are inconsistent with the provisions of any other general, special, or local law, the provisions of this act shall be controlling.

History: En. Sec. 13, Ch. 126, L. 1939.

11-2414. Refunding revenue bonds. (1) Refunding revenue bonds issued as authorized in sections 11-2403 and 11-2404 shall be governed by all of the provisions of this chapter as fully as bonds issued for the initial financing of any undertaking, and by the further provisions of this section.

(2) Refunding revenue bonds may, with the consent of the holders of the bonds to be refunded thereby, be exchanged at par plus accrued interest for all or part of such bonds, or may be sold at a price not less than par plus accrued interest. Nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor, except in accordance with the terms of such outstanding bond. Bonds may be issued to refund interest as well as principal actually due and payable, if the revenues pledged therefor are not sufficient, but not to refund any bonds or interest due which can be paid from revenues then on hand.

(3) Refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby, if they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient, or if the refunding bonds are combined with an issue of new bonds for reconstruction, improvement, betterment or extension and the lien of such new bonds upon the revenues of the undertaking must be junior and subordinate to the lien of the outstanding bonds refunded, under the terms of the ordinances or resolutions authorizing the outstanding bonds, as applied to circumstances existing on the date of refunding. Except as authorized in the preceding sentence, refunding bonds shall not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least three-eighths of one per cent (⅜ of 1%) less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.

(4) In any case where refunding bonds are issued and sold six (6) months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, which is a member of the Federal Reserve System and has a combined capital and surplus not less than one million dollars ($1,000,000), and shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which such bond may be called for redemption, and to pay and redeem the principal amount of each such bond at maturity or, if prepayable, at its earliest redemption date, and any premium required for redemption on such

date; and the resolution or ordinance authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom, and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for co-operatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds.

(5) Revenues and other funds on hand, in excess of amounts pledged by ordinances and resolutions authorizing outstanding bonds for the payment of principal and interest currently due thereon and reserves securing such payment, may be used to pay the expenses incurred by the municipality for the purpose of such refunding, including but without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents. Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of such bonds and may be invested and disbursed as provided in subsection (4) hereof, to the extent consistent with the ordinances or resolutions authorizing such outstanding bonds.

History: En. 11-2414 by Sec. 1, Ch. 50, L. 1936.

CHAPTER 25

ABATEMENT OF SMOKE NUISANCE

Section 11-2501. Injurious smoke may be abated.
11-2502. Petition for abatement.
11-2503. Contract for abatement.
11-2504. Bonds.
11-2505. Election.
11-2506. Notice of election.
11-2507. Character of bonds.
11-2508. Sale of bonds.
11-2509. Payment of bonds.
11-2510. Modification of contract.
11-2511. Provisions concerning election.

11-2501. (5289) **Injurious smoke may be abated.** It shall be lawful for any county or incorporated city or town in any county in this state, where injurious and unhealthy smoke and fumes exist, to make contracts for the abatement thereof, and to issue and dispose of bonds for that purpose, subject to the limitations and conditions hereinafter provided.

History: En. Sec. 1, p. 142, L. 1893; re-en. Sec. 4831, Pol. C. 1895; re-en. Sec. 3430, Rev. C. 1907; re-en. Sec. 5289, R. C. M. 1921.

Collateral References

Counties⇐21½; Municipal Corporations ⇐606.

20 C.J.S. Counties § 49; 62 C.J.S. Municipal Corporations § 298.

37 Am. Jur. 939, Municipal Corporations, § 295.

11-2502. (5290) **Petition for abatement.** Wherever a petition is presented to the board of county commissioners of any county, or to the council of any incorporated city or town, signed by at least one hundred of the resident taxpayers of such county or incorporated city or town, requesting that a contract be made and vote taken under this act, it shall be the duty of the board of county commissioners of such county or council of such incorporated city or town, as the case may be, to enter into and make a contract for the abatement of such injurious and unhealthy smoke or fumes, or for conducting or carrying the same away, so as to remove or lessen the injurious and unhealthy results thereof as effectually as the same can be done. Such contract shall be entered into and made with such person or persons, corporation or corporations, and contain such provisions and conditions as will, in the opinion of the board of county commissioners or council of said incorporated town or city, as the case may be, best accomplish the purpose aforesaid, and shall take effect and be in force as provided in this act.

History: En. Sec. 2, p. 142, L. 1893; re-en. Sec. 4832, Pol. C. 1895; re-en. Sec. 3431, Rev. C. 1907; re-en. Sec. 5290, R. C. M. 1921.

Collateral References

Counties⇐113 (1); Municipal Corporations⇐623 (4).

20 C.J.S. Counties §§ 175-177; 62 C.J.S. Municipal Corporations § 281.

11-2503. (5291) **Contract for abatement.** Whenever a contract shall have been entered into as aforesaid, it shall be reduced to writing and executed by the parties in due form of law, and three copies thereof deposited with the clerk of the board of county commissioners or clerk of the council, as the case may be, for public inspection and examination, and the person or persons, corporation or corporations, with whom said contract shall have been made, shall execute their or its bond or bonds with sufficient sureties to such board of county commissioners or city or town, conditioned for the full and faithful performance of all the terms and conditions on their part, the terms, conditions, and penalty of which shall be approved by the contracting board or council, which said bond or bonds shall be in full force and effect upon the ratification thereof as hereinafter provided, the condition of which shall be expressed therein.

History: En. Sec. 3, p. 143, L. 1893; re-en. Sec. 4833, Pol. C. 1895; re-en. Sec. 3432, Rev. C. 1907; re-en. Sec. 5291, R. C. M. 1921.

Collateral References

Counties⇐121, 123; Municipal Corporations⇐338, 345, 623 (1).

20 C.J.S. Counties §§ 190, 201; 62 C.J.S. Municipal Corporations § 281; 63 C.J.S. Municipal Corporations §§ 1159, 1171 et seq.

11-2504. (5292) **Bonds.** For the purpose of raising moneys to meet the payments under the terms and conditions of said contract, and other necessary and proper expenses in and about the same, and the approval or disapproval thereof, it shall be the duty of the board of county commissioners, if the petition be presented to it within thirty days thereafter, to ascertain the existing indebtedness of the county in the aggregate, and within sixty days after ascertaining the same to submit to the electors of such county the proposition to approve or disapprove the said contract, and the issuance of bonds necessary to carry out the same, which shall not

exceed five per centum of the value of the taxable property therein, inclusive of the existing indebtedness thereof, to be ascertained by the last assessment for state and county taxes previous to the issuance of said bonds and incurring said indebtedness; and if said petition be presented to the council of any incorporated city or town, then within thirty days thereafter they shall ascertain the aggregate indebtedness of such city or town, and, within sixty days after ascertaining the same, submit to the electors of such city or town the proposition to approve or disapprove said contract, and the issuance of bonds necessary to carry out the same, which shall not exceed three per centum of the value of the taxable property therein, inclusive of the existing indebtedness thereof, to be ascertained in the manner hereinbefore provided, and if disapproved, the expenses of such election shall be paid out of the general fund of such county, city, or town, as the case may be.

History: En. Sec. 4, p. 143, L. 1893; re-en. Sec. 4834, Pol. C. 1895; re-en. Sec. 3433, Rev. C. 1907; re-en. Sec. 5292, R. C. M. 1921.

Collateral References

Counties⇐178; Municipal Corporations ⇐918 (1).

20 C.J.S. Counties §§ 265, 266; 64 C.J.S. Municipal Corporations § 1920.

11-2505. (5293) **Election.** The vote upon such proposition shall be had at an election for that purpose to be held, conducted, counted, and results ascertained and determined in the manner and by the same officers provided by law for general elections, except as otherwise herein provided, and the proposition to be submitted shall be upon printed tickets or ballots, upon each of which shall be printed the following: "For the contract and bonds," "Against the contract and bonds," the former above the latter, and the elector shall indicate his vote by a cross opposite the one or the other for which he votes; and if it appears from the result of such election that a majority of the votes cast were "For the contract and bonds," then said contract shall be in full force and effect, and the said bonds shall be issued and disposed of in the manner hereinafter provided. If it shall appear from the result of such election that there was a tie, or a majority of said votes were cast "Against the contract and bonds," then the said contract and bond given for its fulfillment shall be null and void and of no effect, and said bonds and none thereof shall be issued.

History: En. Sec. 5, p. 144, L. 1893; re-en. Sec. 4835, Pol. C. 1895; re-en. Sec. 3434, Rev. C. 1907; re-en. Sec. 5293, R. C. M. 1921.

Collateral References

Counties⇐178; Municipal Corporations ⇐918 (4).

20 C.J.S. Counties §§ 265, 266; 64 C.J.S. Municipal Corporations § 1927.

11-2506. (5294) **Notice of election.** The board of county commissioners of the county in which such election is to be held, or the council of the incorporated city or town, as the case may be, shall give notice of such election, stating the objects thereof, the time and place of holding the same, such conditions of the contract as in their judgment are proper and necessary to enable the electors to vote intelligently upon the proposition submitted to them, the amount of bonds proposed to be issued, when payable, and the interest they are to bear, with a description of the tickets or ballots to be used, in some newspaper printed and published and

circulated in the county, or city, or town, as the case may be, in which such election shall be held, at least three times a week for at least six consecutive weeks next preceding such election, and if no newspaper be printed, published, and circulated therein, then in some newspaper printed and published in some county nearest thereto.

History: En. Sec. 6, p. 144, L. 1893; re-en. Sec. 4836, Pol. C. 1895; re-en. Sec. 3435, Rev. C. 1907; re-en. Sec. 5294, R. C. M. 1921.

11-2507. (5295) **Character of bonds.** The bonds to be issued upon the conditions and under the provisions aforesaid shall bear the date of their issuance; shall be designated as sanitary coupon bonds of the county, city, or town issuing the same; shall be of a denomination not less than five hundred nor more than one thousand dollars each; shall be payable at such place in New York City or elsewhere at the discretion of the board or council issuing the same; shall bear interest at the rate of six per cent per annum, payable thirty years after the date thereof, with the privilege of paying the same at any time after five years from such date, which interest shall be payable semiannually at the place whereat the principal is payable, and for which interest coupons shall be attached to said bonds. If said bonds and coupons are issued by any county, they shall be signed by the chairman of the board of county commissioners of such county and attested by the clerk thereof, and his seal thereto attached; and if issued by any incorporated city or town, the same shall be signed by the mayor and attested to by the city or town clerk, and the seal thereof attached.

History: En. Sec. 7, p. 145, L. 1893; re-en. Sec. 4837, Pol. C. 1895; re-en. Sec. 3436, Rev. C. 1907; re-en. Sec. 5295, R. C. M. 1921.

Collateral References

Counties⇦183 (2); Municipal Corporations⇦923-926.

20 C.J.S. Counties § 268; 64 C.J.S. Municipal Corporations §§ 1935-1941.

11-2508. (5296) **Sale of bonds.** The board of county commissioners or council, as the case may be, may provide by said contract for the delivery of said bonds, or any part thereof, at their face value, upon the terms and conditions in said contract provided, or may sell and dispose of the same, or any part thereof, to raise funds to carry out said contract, and use such funds for that purpose, and for the payment of any expert or experts, or any incidental expenses proper and necessary in and about said contract, and the carrying out of the same. And in the event said bonds are sold, they shall be sold for cash to the highest bidder, after public notice by publication in a paper of general circulation, which may be printed and published in each county in the state, and also by publication in at least three newspapers of general circulation, printed and published in the cities of Boston and New York. Such notice shall be published at least once a week and shall contain, in substance, a description of said bonds, as set out in the preceding section of this act, and the proceeds of the sales thereof shall be paid over to the county treasurer or the city or town treasurer, as the case may be, and kept as a separate and independent fund for the purposes herein provided, and shall be known as the sanitary coupon bond fund, and shall be deposited and kept in such a manner, and at such bank or banks, as the board of county commissioners of the county

or council of the city or town, owning such funds, may direct, and which shall not be paid out or disbursed except upon warrants or orders drawn thereon by the board of county commissioners or council of such incorporated city or town, signed and attested in the manner provided by law.

History: En. Sec. 8, p. 145, L. 1893; re-en. Sec. 4838, Pol. C. 1895; re-en. Sec. 3437, Rev. C. 1907; re-en. Sec. 5296, R. C. M. 1921.

Collateral References

Counties⇐182; Municipal Corporations ⇐921 (1).

20 C.J.S. Counties § 275; 64 C.J.S. Municipal Corporations § 1930.

11-2509. (5297) **Payment of bonds.** The faith of the county or incorporated city or town issuing bonds under the provisions of this act is solemnly pledged for the payment of the principal and interest according to the tenure of said bonds and the coupons attached to the same, and the board of county commissioners of the county or council of the incorporated city or town, issuing said bonds, shall ascertain and levy and assess a tax sufficient to pay the interest upon said bonds, and form such sinking fund for the payment of the principal thereof as may be necessary and proper, in the manner provided by law or ordinance, which shall become a lien and be collected as other taxes, and shall be kept as a separate fund, as hereinbefore provided, and all bonds, coupons, orders, and warrants issued and drawn under the provisions of this act shall be promptly paid, registered, and entered in books kept for that purpose, and correct and proper entries made in respect thereto, and the same when paid shall be canceled and preserved, and proper entries made thereof, as provided by law in cases of other bonds, warrants, and orders.

History: En. Sec. 9, p. 146, L. 1893; re-en. Sec. 4839, Pol. C. 1895; re-en. Sec. 3438, Rev. C. 1907; re-en. Sec. 5297, R. C. M. 1921.

Collateral References

Counties⇐192; Municipal Corporations ⇐954.

20 C.J.S. Counties § 281; 64 C.J.S. Municipal Corporations § 1955.

11-2510. (5298) **Modification of contract.** In the event it shall be found expedient and proper in executing said contract to modify or change the same in some of the minute details thereof, and such modifications or change shall be agreed upon by the parties thereto, the same may be made with the approval of the judge or judges of the district forming such county, or the judge or judges of the district in which such county or incorporated city or town is included, and, when so approved, shall have the same force and effect as if originally contained therein.

History: En. Sec. 10, p. 146, L. 1893; re-en. Sec. 4840, Pol. C. 1895; re-en. Sec. 3439, Rev. C. 1907; re-en. Sec. 5298, R. C. M. 1921.

Collateral References

Counties⇐127; Municipal Corporations ⇐354.

20 C.J.S. Counties § 198; 63 C.J.S. Municipal Corporations § 1183.

11-2511. (5299) **Provisions concerning election.** No registration under the election laws of this state shall be required for the purposes of the election herein provided for, and the registration had at the last election preceding the same shall govern and control as if especially had and done for the purposes of the election to be held under this act.

History: En. Sec. 11, p. 146, L. 1893; re-en. Sec. 4841, Pol. C. 1895; re-en. Sec. 3440, Rev. C. 1907; re-en. Sec. 5299, R. C. M. 1921.

Collateral References

Elections⇐97.

29 C.J.S. Elections § 38.

CHAPTER 26

DAMAGE CAUSED BY CHANGE OF GRADE

Section 11-2601. Damages must be paid on change of grade.
11-2602. Appraisement of damages.
11-2603. Time for report to be made.
11-2604. Appeals and proceedings thereunder.
11-2605. Issues made.
11-2606. Costs—how taxed.

11-2601. (5300) **Damages must be paid on change of grade.** When the grade of any street or sidewalk in any city or town is established by the corporate authority of such city or town, and a building shall thereafter be constructed upon a lot abutting on said street, no change must be made in the grade of such street or sidewalk which requires the raising or lowering of any building so constructed until the damages which may accrue by reason of such raising or lowering are ascertained and paid, as is hereinafter provided.

History: En. Sec. 4940, Pol. C. 1895; re-en. Sec. 3441, Rev. C. 1907; re-en. Sec. 5300, R. C. M. 1921.

Change of Grade outside City or Town

Court properly refused state's requested instructions to the effect that this section could be construed to mean that no compensation may be awarded for a change of grade when the highway involved is not located within the limits of a city or town. State Highway Commission v. Keneally, 142 M 256, 384 P 2d 770.

Grade of Streets

After the grade of a street has once been established, the city, under sections 11-970 and this section, may not change it until the damages to abutting property have been determined and tendered to the owner. State ex rel. City of Miles City v. Northern Pacific Ry. Co., 88 M 529, 295 P 257.

Before a city may exercise the power conferred by amended section 11-914 to order the construction of a subway street crossing necessitating a change in the grade of the street, it must comply with the provisions of section 11-970, and this section, they being limitations upon the exercise of its police power in that behalf. State ex rel. City of Miles City v. Northern Pacific Ry. Co., 88 M 529, 295 P 257, explained in 142 M 256, 268, 384 P 2d 770.

Collateral References

Municipal Corporations⇐835 (1).

63 C.J.S. Municipal Corporations § 1227 et seq.

Damages for change of grade in widening street. 64 ALR 1527.

Interest as part of damages for change of grade. 96 ALR 206 and 36 ALR 2d 471.

11-2602. (5301) **Appraisement of damages.** In case the council of such city or town and the owner of such building are unable to agree upon the amount of such damages, the council must appoint three disinterested freeholders of such city or town to appraise such damages. The appraisers so appointed, after being duly sworn, must appraise the damage and make two written reports thereof, signed by at least a majority of them, one of which must be delivered to the clerk of such city or town, to be immediately filed in his office, and the other to the owner of the building.

History: En. Sec. 4941, Pol. C. 1895; re-en. Sec. 3442, Rev. C. 1907; re-en. Sec. 5301, R. C. M. 1921.

Inability To Agree

The power of the city to appoint a board of appraisers and clothe it with any

authority is made to depend upon the inability of the city and owner to agree, which, of course, implies effort, and before the appointment is made, it should appear that they were in fact unable to agree. State ex rel. City of Butte v. District Court, 48 M 614, 617, 139 P 791.

Collateral References

Municipal Corporations⇐402 (6), (7).

63 C.J.S. Municipal Corporations § 1272 et seq.

11-2603. (5302) **Time for report to be made.** Such report must be made and delivered within ten days after the appointment of the appraisers.

History: En. Sec. 4942, Pol. C. 1895; re-en. Sec. 3443, Rev. C. 1907; re-en. Sec. 5302, R. C. M. 1921.

11-2604. (5303) **Appeals and proceedings thereunder.** Within twenty days after the filing of the report with the clerk, either party feeling dissatisfied with such appraisement may file in the office of the clerk of the district court, within the county in which such city or town is located, a copy of such report, certified by the clerk of such city or town, and file with said clerk and serve on the opposite party a notice of appeal from such report, whereupon the clerk of the district court must cause such proceedings to be entered on the register of actions, designating such city or town as plaintiff, and the owner of the building as defendant, and the question of the amount of damages may be tried by a jury or the court.

History: En. Sec. 4943, Pol. C. 1895; re-en. Sec. 3444, Rev. C. 1907; re-en. Sec. 5303, R. C. M. 1921.

Cross-Reference

Application of Montana Rules of Civil Procedure to appeal from appraisement, see M. R. Civ. P., Rule 81 (a), Table A.

11-2605. (5304) **Issues made.** The report of the appraisers is the complaint, all the material facts of which in reference to damages are considered denied, and these constitute the issues to be tried.

History: En. Sec. 4944, Pol. C. 1895; re-en. Sec. 3445, Rev. C. 1907; re-en. Sec. 5304, R. C. M. 1921.

11-2606. (5305) **Costs—how taxed.** In case the owner of the building appeals and the damages are not increased, or in case the city or town appeals, and the damages are decreased in the district court, the costs must be paid by the defendant. In all other cases, or in the case no appeal is taken, the costs must be paid by the city or town.

History: En. Sec. 4945, Pol. C. 1895; re-en. Sec. 3446, Rev. C. 1907; re-en. Sec. 5305, R. C. M. 1921.

References

State ex rel. City of Butte v. District Court, 48 M 614, 616, 139 P 791.

CHAPTER 27

BUILDING REGULATIONS—ZONING COMMISSION

Section 11-2701. Building restrictions by cities and towns authorized.
11-2702. Districts for effecting building restrictions.
11-2703. Purposes of act.
11-2704. Method of procedure.
11-2705. Changes.

11-2706. Zoning commission.
11-2707. Board of adjustment.
11-2708. Enforcement and remedies.
11-2709. Conflict with other laws.
11-2710. Repealed.

11-2701. (5305.1) **Building restrictions by cities and towns authorized.** For the purpose of promoting health, safety, morals, or the general welfare of the community, the city or town council, or other legislative body of cities and incorporated towns is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence, or other purposes.

History: En. Sec. 1, Ch. 136, L. 1929.

Cross-Reference

City-county planning boards, sec. 11-3801 et seq.

Constitutionality

This act, authorizing the creation of zoning ordinances in cities and towns and the appointment of a board of adjustment, as well as such an ordinance involved in the case at bar, is free from constitutional objections. Freeman v. Board of Adjustment, City of Great Falls, 97 M 342, 347, 34 P 2d 534.

State May Delegate Police Power to Municipality

The state, in which the police power is lodged, may by act of the legislature delegate such power to a muncipality for the purpose of enacting zoning ordinances, as it did in this state by enacting chapter 136, Laws of 1929 (11-2701 to 11-2709). Freeman v. Board of Adjustment, City of Great Falls, 97 M 342, 347, 34 P 2d 534.

Collateral References

Municipal Corporations⇐601 (1).

62 C.J.S. Municipal Corporations § 226 (1) et seq.

13 Am. Jur. 2d 266, Buildings, § 2 et seq.

Constitutionality of city or town planning statutes or ordinances. 12 ALR 679; also 28 ALR 314; 44 ALR 1377 and 53 ALR 1222.

Public regulation of gasoline filling stations. 18 ALR 101; 29 ALR 450; 34 ALR 507; 42 ALR 978; 49 ALR 767; 55 ALR 256; 79 ALR 918 and 96 ALR 1337.

Zoning: Creation by statute or ordinance of restricted residence districts within municipality from which business buildings are excluded. 19 ALR 1395; 33 ALR 287; 38 ALR 1496; 43 ALR 668; 54 ALR 1030; 86 ALR 659 and 117 ALR 1117.

Constitutionality of statute or ordinance limiting height of buildings. 34 ALR 46 and 8 ALR 2d 963.

Zoning regulations with respect to garages. 40 ALR 351; 55 ALR 374 and 84 ALR 1150.

Injunction as a remedy for violation of zoning ordinance. 54 ALR 366 and 129 ALR 885.

What enterprise or activity is permissible in business zone. 128 ALR 1214.

Suburban zoning regulations. 131 ALR 1055.

Attack upon validity of zoning statute or ordinance as affected by provisions for variation, permit, etc. 136 ALR 1378.

Building restrictions, by covenant or condition in deed or by zoning regulation, as applied to religious groups. 148 ALR 367.

Construction and application of provision of zoning ordinance which permits use for accessory or incidental purposes. 150 ALR 494.

Zoning regulations in relation to cemeteries. 151 ALR 742.

Radio equipment as within zoning ordinance or restrictive covenant. 155 ALR 1134.

Construction and application of provisions of zoning regulations respecting permissible use, where lot or parcel is divided by zone boundary lines. 159 ALR 854.

Zoning regulations as affecting airports and airport sites. 161 ALR 1232.

Validity of building height regulations. 8 ALR 2d 963.

Zoning regulations in respect of intoxicating liquors. 9 ALR 2d 877.

Validity and effect of "spot zoning." 51 ALR 2d 263.

Zoning: Changes, repairs, or replacements in continuation of nonconforming use. 87 ALR 2d 4.

Construction and application of terms "agricultural," "farm," "farming," or the like in zoning regulations. 97 ALR 2d 702.

Construction and application of zoning regulations in connection with bomb or fallout shelters. 7 ALR 3d 1443.

Prohibiting or regulating removal or exploitation of oil and gas, minerals, soil, or other natural products within municipal limits. 10 ALR 3d 1226.

Application of zoning regulations to automatic vending machines. 11 ALR 3d 1004.

Meaning of the term "garage" as used in zoning regulation. 11 ALR 3d 1187.

Purchaser of real property as precluded from attacking validity of zoning regulations existing at the time of the purchase and affecting the purchased property. 17 ALR 3d 743.

11-2702. (5305.2) **Districts for effecting building restrictions.** For any or all of said purposes the local city or town council or other legislative body may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this act; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

History: En. Sec. 2, Ch. 136, L. 1929.

Collateral References

Validity of building height regulations. 8 ALR 2d 963.

11-2703. (5305.3) **Purposes of act.** Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

History: En. Sec. 3, Ch. 136, L. 1929.

11-2704. (5305.4) **Method of procedure.** The city or town council, or other legislative body of such municipality shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen (15) days notice of the time and place of such hearing shall be published in an official paper, or a paper of general circulation, in such municipality.

History: En. Sec. 4, Ch. 136, L. 1929.

References

Olson v. City Commission of City of Helena, 146 M 386, 407 P 2d 374.

11-2705. (5305.5) **Changes.** Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change, signed by the owners of twenty per centum (20%) or more either of

the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred and fifty (150) feet therefrom, or of those directly opposite thereof extending one hundred and fifty (150) feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths (¾) of all the members of the city or town council or legislative body of such municipality. The provisions of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments.

History: En. Sec. 5, Ch. 136, L. 1929.

References

Olson v. City Commission of City of Helena, 146 M 386, 407 P 2d 374.

11-2706. (5305.6) **Zoning commission.** In order to avail itself of the powers conferred by this act, the city or town council or other legislative body, shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and such city or town council or other legislative body shall not hold its public hearings or take action until it has received the final report of such commission.

History: En. Sec. 6, Ch. 136, L. 1929.

Collateral References

Municipal Corporations⇐621 (39).
62 C.J.S. Municipal Corporations § 227 (1).

Cross-Reference

City-county planning boards, 11-3801 et seq.

11-2707. (5305.7) **Board of adjustment.** Such city or town council or other legislative body may provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this act may provide that the said board of adjustment may, in appropriate cases, and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purposes and intent and in accordance with the general or specific rules therein contained.

(1) The board of adjustment shall consist of five (5) members, each to be appointed for a term of three (3) years and removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

(2) The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this act. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

(3) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appealed was taken.

(4) An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by attorney.

(5) The board of adjustment shall have the following powers:

To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this act or of any ordinance adopted pursuant thereto.

To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.

To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

(6) In exercising the above-mentioned powers such board may, in conformity with the provisions of this act, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

(7) The concurring vote of four (4) members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

(8) Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to a court of

record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the board.

(9) Upon the presentation of such petition the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

(10) The board of adjustment shall not be required to return the original papers acted upon by it, but shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(11) If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

(12) Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

History: En. Sec. 7, Ch. 136, L. 1929.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81 (a), Table A.

Powers of Board of Adjustment Broad, General and Discretionary

Contention that the powers of the board of adjustment (or appeal) created by this act, authorizing the enactment of zoning ordinances in cities and towns, are limited to slight variations, such as the height of a building, the distance it must be from the street, etc., held not meritorious, but that on the contrary the board, an administrative body vested with general power to act as a fact-finding body and determine whether in any specific case unusual hardship might result from an enforcement of the strict letter of the ordinance, possesses broad and general powers with a considerable latitude for the exercise of the discretion, the conferring of which powers does not constitute an unlawful delegation of legislative authority. Freeman v. Board of Adjustment of City of Great Falls, 97 M 342, 368, 34 P 2d 534, distinguished in 141 M 354, 368, 377 P 2d 758.

Prior to the enactment of a city zoning ordinance a grocery store had been conducted for several years in a rented building later incorporated in a residential district under the ordinance; after its enactment the storekeeper purchased a lot in the same block and but a short distance from the location of the store and contracted for the erection of a structure thereon for store and residence purposes and asked for a building permit. The permit being refused on the ground that the location was in a residential district, he appealed to the board of adjustment appointed under the ordinance, which ordered that the permit be granted because denial of it would result in unnecessary hardship. Held, on appeal by the former landlord of petitioner from a judgment of the district court on writ of certiorari affirming the action of the board, that there was not sufficient substantial evidence to warrant a finding that the board had not

abused its discretion in making the order attacked. Freeman v. Board of Adjustment of City of Great Falls, 97 M 342, 368, 34 P 2d 534, distinguished in 141 M 354, 368, 377 P 2d 758.

Collateral References

Municipal Corporations⇐621 (39).

62 C.J.S. Municipal Corporations § 227 (2).

Validity and construction of provisions of zoning statute or ordinance respecting protest or petition by property owners. 4 ALR 2d 335.

Validity of zoning ordinance or similar public regulation requiring consent of neighboring property owners to permit or sanction specified uses or construction of buildings. 21 ALR 2d 551.

11-2708. (5305.8) **Enforcement and remedies.** The city or town council, or other legislative body, may provide by ordinance for the enforcement of this act and of any regulation or ordinance made thereunder. A violation of this act, or of such ordinance or regulation is hereby declared to be a misdemeanor and such city or town council or other legislative body may provide for the punishment thereof by fine or imprisonment or both. It is also empowered to provide civil penalties for such violation.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure, or land is used in violation of this act, or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of such building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises.

History: En. Sec. 8, Ch. 136, L. 1929.

Collateral References

Municipal Corporations⇐621 (48), 631 (2).

62 C.J.S. Municipal Corporations §§ 228 (1), 315 et seq.

Right to resume nonconforming use after period of nonuse or of a different use from that in effect at or before the time of zoning. 18 ALR 2d 725.

11-2709. (5305.9) **Conflict with other laws.** Wherever the regulations made under authority of this act require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this act shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this act, the provisions of such statute or local ordinance or regulation shall govern.

History: En. Sec. 9, Ch. 136, L. 1929.

Collateral References

Municipal Corporations⇐592 (1).

62 C.J.S. Municipal Corporations § 143.

11-2710. Repealed.—Chapter 246, Laws of 1963.

Repeal

This section (Sec. 1, Ch. 171, L. 1959), giving zoning powers to boards of county commissioners, was repealed by Sec. 12, Ch. 246, Laws 1963.

Unconstitutional

This section (Sec. 1, Ch. 171, L. 1959), authorizing county commissioners to exercise building and zoning regulatory powers was invalid as an unconstitutional attempt to delegate legislative powers to counties in violation of section 1, article IV of the Montana constitution. Plath v. Hi-Ball Contractors, Inc., 139 M 263, 362 P 2d 1021, 1025.

CHAPTER 28

VACATION AND ABANDONMENT OF STREETS, PARKS AND TOWNSITES

Section 11-2801. Discontinuation of streets—procedure.
11-2802. Notice must be given.
11-2803. Vacation of plats in abandoned townsites.
11-2804. Validating orders of county commissioners vacating plats—orders vacating lots, streets, etc.
11-2805. Vacation of parks, boulevards and public places in unincorporated towns.

11-2801. (5306) **Discontinuation of streets—procedure.** The council, or county commissioners if the town be unincorporated, may discontinue a street or alley, or any part thereof, in a city or town or unincorporated town or townsites, upon the petition in writing of all owners of lots on the streets or alleys, if it can be done without detriment to the public interest; provided that where the street or alley is to be closed for school purposes, a petition signed by seventy-five per cent (75%) of the lot owners on the whole street or alley to be closed, will be required; provided further that such vacation shall not affect the right of any public utility to continue to maintain its plant and equipment in any such streets or alleys.

All proceedings heretofore had and all orders heretofore made by the city council of any city or town or, if the town be unincorporated, by the county commissioners, discontinuing any street or alley or any part thereof in a city or town or unincorporated town or townsites are hereby validated, confirmed, and declared to have discontinued said streets, alleys or parts thereof, as of the date thereof.

History: En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5030, Pol. C. 1895; re-en. Sec. 3479, Rev. C. 1907; re-en. Sec. 5306, R. C. M. 1921; amd. Sec. 1, Ch. 13, L. 1929; amd. Sec. 1, Ch. 1, L. 1941; amd. Sec. 1, Ch. 36, L. 1945.

Evidence of Public Detriment

Where the record did not show that the commissioners made a finding of fact that a street could be closed without detriment to the public interest but it did show a detriment to abutting landowners, to the city, and to the public interest generally, the petition for discontinuance should have been denied. Miller v. Schrock, 135 M 409, 340 P 2d 154.

References

Barnard Realty Co. v. City of Butte, 48 M 102, 113, 136 P 1064.

Collateral References

Municipal Corporations⇐657 (2), (4).

64 C.J.S. Municipal Corporations § 1666 et seq.

39 Am. Jur. 2d, Highways, Streets, and Bridges, p. 510, §§ 137-156; p. 561, §§ 184, 185.

11-2802. (5307) **Notice must be given.** Before acting upon such petition a notice must be published or posted in three public places, stat-

ing when such petition will be acted on, and what street or alley, or part thereof, is asked to be vacated. Such notice must be published in a newspaper or posted at least one week before the petition is acted on.

History: En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5031, Pol. C. 1895; re-en. Sec. 3480, Rev. C. 1907; re-en. Sec. 5307, R. C. M. 1921.

Collateral References

Municipal Corporations⇐657 (5).

64 C.J.S. Municipal Corporations § 1670 et seq.

References

Barnard Realty Co. v. City of Butte, 48 M 102, 113, 136 P 1064.

11-2803. (5308) **Vacation of plats in abandoned townsites.** (1) When there shall have been filed in the office of the county clerk of any county of this state a plat of any village or townsite, or a plat of any vineyard tracts, acreage tracts, suburban tracts or community tracts designated in section 11-614, and it is desired by the owners of said lands to vacate said plat, the county commissioners of the county in which such plat is filed, upon petition of the owners of all the lands described in said plat, and upon such conditions as may be reasonable, shall cancel and annul said plat and shall vacate the lots, streets, alleys, parks and boulevards, if any, described in said plat, and thereafter the designation of said property shall be by metes and bounds or by legal subdivisions if the circumstances may require and the same shall be assessed accordingly. If any post office, store or other business establishment shall be located within such platted area, that fact shall not prevent the cancellation and vacating of said plat in accordance with the terms of this act, but, in all cases where it shall be necessary to designate the location of any such post office, store or other business property by metes and bounds for purposes of identification, such designation shall be made in the order to be entered by the board of county commissioners.

(2) Petitions under the terms of this act shall be signed by all the owners of the land in such platted area, shall distinctly refer to the original plat for purposes of identification and shall disclose that the petitioners are the owners of all the lands described in said plat, and that no rights of any person have intervened since the filing of said plat which would be adversely affected by the cancellation and annulment thereof. Provided, however, that when only a portion or portions of any village or townsite in any unincorporated village or town is sought to be vacated or excluded therefrom and said portion or portions is not less than three blocks in area, and situated at the limits or boundaries of said village or townsite, a verified petition may be filed in the office of the clerk of the district court of the county where said village or townsite is situated by the owner or owners of all the property sought to be vacated or excluded, which petition shall be addressed to the district court of the said county, setting forth the description of the portion or portions sought to be excluded and the reason or reasons for desiring such portion or portions to be excluded. A citation shall thereupon be issued by the judge of the court before whom said matter is pending, citing all persons interested in said matter to appear before said court at a time and place specified in said citation, but at a time not less than three (3) weeks from the date of

said citation, which citation shall be published in a newspaper of regular circulation in the said county, or if no such newspaper is in said county, then in such a newspaper located in an adjoining county of the state, which citation shall be published once a week for two (2) successive weeks before the date of said hearing.

(3) Upon the hearing of said petition and upon conditions that may seem reasonable, the court may vacate and exclude the portion or portions of said village or townsite as prayed for in said petition, including any streets, alleys, parks or boulevards upon which no public easement or easements shall vest, and such excluded property shall be described by metes and bounds in the decree of the court, and said property shall be assessed accordingly.

History: En. Sec. 1, Ch. 6, L. 1907; Sec. 3548, Rev. C. 1907; re-en. Sec. 5308, R. C. M. 1921; amd. Sec. 1, Ch. 54, L. 1929; amd. Sec. 1, Ch. 117, L. 1935; amd. Sec. 1, Ch. 70, L. 1951; amd. Sec. 1, Ch. 27, L. 1955.

Collateral References

Municipal Corporations⇐41-43.

62 C.J.S. Municipal Corporations §§ 83, 84.

11-2804. Validating orders of county commissioners vacating plats—orders vacating lots, streets, etc. All proceedings heretofore had and all orders heretofore made by the county commissioners of any county canceling, annulling, or vacating, or purporting to cancel, annul, or vacate any plat on file in the office of the county clerk of said county, of any village or townsite, or of any vineyard tracts, acreage tracts, suburban tracts, or community tracts, or of any addition to any townsite or to any incorporated city or town, whether such plat covers lands at the time of such proceedings or order lying

(a) wholly outside the corporate limits of said city or town, or

(b) wholly within the corporate limits of said city or town, or

(c) partly within and partly without the corporate limits of said city or town,

and any such proceedings or orders vacating or purporting to vacate any lots, streets, alleys, parks and boulevards situate on land covered by such plat are hereby validated, confirmed, and declared to have canceled, annulled and vacated said plats, or the portions thereof designated, and to have vacated said lots, streets, alleys, parks and boulevards of the date thereof. Provided, however, that as to the vacating of any streets, avenues, alleys, parks or boulevards within the corporate limits of any incorporated city or town, the vacating of which at the time of the action of the county commissioners required action by any city council, the action of the county commissioners vacating the same shall not be effective for the purpose of vacating any such streets, avenues, alleys, parks or boulevards unless or until the same are vacated by such city council.

History: En. Sec. 1, Ch. 13, L. 1943.

11-2805. (5309) **Vacation of parks, boulevards and public places in unincorporated towns.** Whenever a petition signed by freeholders, owning at least two-thirds of the property fronting on any street of any unincorporated townsite in this state, shall be presented to the board of county

commissioners of the county in which such townsite is situated, praying said board to vacate any park, boulevard, or other public place, bordering on said street and the adjoining property, and not used for road or highway purposes, which park, boulevard, or public place has been dedicated to public use, such board shall hear said petition, and, if in its judgment it appears to be for the best interests of the public that such petition be granted, it shall, by order of the board, duly entered upon its minutes, declare such park, boulevard, or public place vacated, and thereupon the land included therein shall attach to and become part of the adjoining lots of said townsite, and the title thereto pass with conveyance of said lots.

History: En. Sec. 1, Ch. 60, L. 1907; Sec. 3549, Rev. C. 1907; re-en. Sec. 5309, R. C. M. 1921.

Collateral References

Dedication⊂⇒63 (3).
26 C.J.S. Dedication § 63.

References

Brown v. Foster, 48 M 114, 118, 135 P 993.

CHAPTER 29

ENTRY TOWNSITES ON PUBLIC DOMAIN FOR INCORPORATED CITIES AND TOWNS

Section 11-2901. Council to enter land in United States land office.
11-2902. Filing approved plat.
11-2903. Survey.
11-2904. Plat must be made in duplicate—contents.
11-2905. Notice of survey.
11-2906. What dedicated to public use.
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11-2917. Unclaimed lands.
11-2918. School lots.
11-2919. Payment of expenses—disposition of surplus moneys.
11-2920. Informality not to invalidate.
11-2921. City or townsite on school lands.

11-2901. (5310) **Council to enter land in United States land office.** It is the duty of the city or town council of any city or town in this state to enter at the proper land office of the United States such quantity of land as the inhabitants of any incorporated city or town may be entitled to claim, in the aggregate, according to their population, in the manner required by the laws of the United States and the regulations prescribed by the secretary of the interior of the United States, and by order entered upon their minutes of proceedings, at a regular meeting, to authorize the mayor and clerk of such council, attested by the corporate seal, to make and sign all necessary declaratory statements, certificates, and affidavits, or other instruments requisite to carry into effect the intentions of this article and the intentions of the act of Congress of the United States en-

titled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, and to make proof when required, of the facts necessary to establish the claim of such inhabitants to the lands so granted by said act of Congress.

History: En. Sec. 5060, Pol. C. 1895; re-en. Sec. 3493, Rev. C. 1907; re-en. Sec. 5310, R. C. M. 1921.

Compiler's Note

Act of March 2, 1867, ch. 177, 14 Stat. 541 is compiled in the United States Code as Tit. 43, sec. 718 et seq.

Collateral References

Municipal Corporations⇐42; Towns⇐4.
62 C.J.S. Municipal Corporations § 83; 87 C.J.S. Towns § 11.

11-2902. (5311) **Filing approved plat.** The corporate council of every city and town, situated upon the public lands of this state, must, within three months after date of receipt at the United States district land office of the approved plat of the township, embracing the lands upon which the town or city is situated, file in said land office an application in writing, describing the tract of land thus occupied, and thereafter make proof and payment for the tract in the manner required by law.

History: En. Sec. 5061, Pol. C. 1895; re-en. Sec. 3494, Rev. C. 1907; re-en. Sec. 5311, R. C. M. 1921.

11-2903. (5312) **Survey.** The said council must, after the filing of the application, if not previously done, cause a survey to be made by some competent person of the lands which the inhabitants of said city or town may be entitled to claim under the said act of Congress, located according to the legal subdivisions of the sections and by the section lines of the United States, and the same must be distinctly marked by suitable monuments; such survey must further particularly designate all streets, roads, lanes, and alleys, public squares, churches, school lots, cemeteries, commons, and levees, as the same exist and have been heretofore dedicated in any manner to public use, and by measurement, the precise boundaries and area of each and every lot or parcel of land and premises claimed by any person, corporation, or association within said city or townsite must be designated on the map, showing the name or names of the possessor or occupants and claimants if other than the occupant of each particular lot and parcel of land; and in case of any disputed claim as to lots, lands, premises, or boundaries, the said surveyor, if the same be demanded by any person, shall designate the lines in different color from the body of the plat of such part of any premises so disputed or claimed adversely.

History: En. Sec. 5062, Pol. C. 1895; re-en. Sec. 3495, Rev. C. 1907; re-en. Sec. 5312, R. C. M. 1921.

11-2904. (5313) **Plat must be made in duplicate—contents.** A plat thereof must be made in duplicate, on a scale of not less than eighty feet to one inch, which must be duly certified under oath by the surveyor, one of which must be filed with the county clerk of the county wherein the city or town is situated, and one must be deposited with the city or town clerk. These plats shall be considered public records, and must each be accompanied with a copy of the field notes, and the county clerk must make a

record thereof in a book to be kept by him for that purpose. The said surveyor must number the blocks as divided by the roads and streets opened at the time of making such survey, and must number the several lots consecutively in each block, and all other parcels of land within said town or city surveyed as herein provided, which said numbers must be a sufficient description of any parcel of land in said plats, field notes, and records.

History: En. Sec. 5063, Pol. C. 1895; re-en. Sec. 3496, Rev. C. 1907; re-en. Sec. 5313, R. C. M. 1921.

11-2905. (5314) **Notice of survey.** Before proceeding to make such survey, at least ten days' notice thereof must be given, by posting within the limits of such city or townsite not less than five written or printed notices of the time when such survey shall commence, and by publication thereof in any newspaper or newspapers published in the city or town, if one there be. The survey of said city or town lands must be made to the best advantage, and at the least expense to the holders and claimants thereof; and the council is hereby authorized to receive bids for such surveying, and to let the same by contract to the lowest competent bidder.

History: En. Sec. 5064, Pol. C. 1895; re-en. Sec. 3497, Rev. C. 1907; re-en. Sec. 5314, R. C. M. 1921.

11-2906. (5315) **What dedicated to public use.** All streets, roads, lanes and alleys, public squares, school lots, cemeteries, commons, parks, and levees, surveyed, marked, and platted on the map of any city or townsite, as prescribed and directed by the provisions of this chapter, are hereby declared to be dedicated to public use by the filing of such city or town plat in the office of the county clerk, and become the property of such town or city, and be subject to the control of the council or other municipal authority of such town or city.

History: En. Sec. 5065, Pol. C. 1895; re-en. Sec. 3498, Rev. C. 1907; re-en. Sec. 5315, R. C. M. 1921.

11-2907. (5316) **What plat must show.** Such plat must show such matters as are contained in section 11-602 of this code, and must be made, kept, and filed in the same manner as provided in section 11-609 of this code.

History: En. Sec. 5066, Pol. C. 1895; re-en. Sec. 3499, Rev. C. 1907; re-en. Sec. 5316, R. C. M. 1921.

11-2908. (5317) **Assessment to pay expenses.** Each lot or parcel of said lands having thereon valuable improvements or buildings ordinarily used as dwellings or for business purposes, not exceeding one-tenth of one acre in area, shall be rated and assessed by the said corporate authorities at the sum of one dollar; each lot or parcel of such lands exceeding one-tenth, and not exceeding one-eighth of one acre in area, shall be rated and assessed at the sum of one dollar and fifty cents; each lot or parcel of such lands exceeding in area one-eighth of one acre, and not exceeding

one-quarter of an acre in area, shall be rated and assessed at the sum of two dollars; and each lot or parcel of such lands exceeding one-quarter of an acre, and not exceeding one-half of one acre in area, shall be rated and assessed at the sum of two dollars and fifty cents; and each lot or parcel of land so improved, exceeding one-half acre in area, shall be assessed at the rate of two dollars and fifty cents for each half an acre or fractional part over half an acre; and every lot or parcel of land inclosed, which may not otherwise be improved, or uninclosed, claimed by any person, corporation, or association, shall be rated and assessed at the rate of two dollars per acre or fractional part over an acre; and where, upon one parcel of land, there shall be two or more separate buildings occupied or used ordinarily as dwellings or for business purposes, each such building, for the purposes of this section, shall be considered as standing on a separate lot of land; but the whole of such premises may be conveyed in one deed; which moneys so assessed must be received by the clerk and be paid by him into the city or town treasury.

History: En. Sec. 5067, Pol. C. 1895; re-en. Sec. 3500, Rev. C. 1907; re-en. Sec. 5317, R. C. M. 1921.

11-2909. (5318) **Claims for lands.** Every person, company, corporation, or association, claimant of any city or town lot or parcel of land within the limits of such city or townsite, must present to the council, by filing the same with the clerk thereof, within six months after the plat has been filed in the office of the county clerk, his, her, or its affidavit, verified in person or by duly authorized agent or attorney, in which must be concisely stated the facts constituting the possession or right of possession of the claimant, and that the claimant is entitled to the possession thereof as against all other persons, to the best of his knowledge and belief, to which must be attached a copy of so much of the plat of said city or townsite as will fully exhibit the particular lot or parcel of land so claimed, with the abuttals; and every such claimant, at the time of filing such affidavit, must pay to such clerk such sum of money as said clerk shall thereon certify to be due for the assessment mentioned in the preceding section, together with the further sum of five dollars, to be appropriated to the payment of expenses incurred in carrying out the provisions of this chapter, and the said clerk must thereupon give to such claimant a certificate, attested by the corporate seal, containing a description of the lot or parcel of land claimed, and setting forth the amounts paid thereon by such claimant. The council of every such city or town must procure a bound book, wherein the clerk must make proper entries of the substantial matters contained in every such certificate issued by him, numbering the same in consecutive order, setting forth the name of the claimant or claimants in full, date of issue, and description of lot or lots claimed.

History: En. Sec. 5068, Pol. C. 1895; re-en. Sec. 3501, Rev. C. 1907; re-en. Sec. 5318, R. C. M. 1921.

11-2910. (5319) **Deficit in expenses—mode of collection.** If it is found that the amounts hereinbefore specified as assessments and fees for cost and expenses prove to be insufficient to cover and defray all the neces-

sary expenses, the council must estimate the deficiency and assess such deficiency pro rata upon all the lots and parcels of land in such city or town, and declare the same upon the basis set down in section 11-2908 of this code; which additional amount, if any, may be paid by the claimant at the time when the certificate hereinbefore mentioned, or at the time when the deed of conveyance hereinafter provided for is issued.

History: En. Sec. 5069, Pol. C. 1895; re-en. Sec. 3502, Rev. C. 1907; re-en. Sec. 5319, R. C. M. 1921.

11-2911. (5320) **Deed to be given after six months—adverse claims.** At the expiration of six months after the issuance of such certificate, if there has been no adverse claim filed in the meantime, the council must execute and deliver to such claimant, or to his, her, or its heirs, administrator, or assigns, a good and sufficient deed of the premises described in the application of the claimant originally filed, which said deed must be signed and acknowledged by the mayor or other presiding officer of the council, and attested by the corporate seal of such city or town. No conveyance of any such lands made as in this chapter provided concludes the rights of third persons; but such third persons may have their action in the premises to determine their alleged interest in such lands against such grantee, his heirs or assigns, to which they may deem themselves entitled either in law or equity; but no action for the recovery or possession of such premises, or any portion thereof, must be maintained in any court against the grantee named therein, or against his, her, or its assigns, unless such action shall be commenced within two years after such deed shall have been filed for record in the office of the county clerk of the county where such lands are situate. Nothing herein shall be construed to extend the time of limitation prescribed by law for the commencement of actions upon a possessory claim or title to real estate, when such action is barred by law at the time of the passage of this code.

History: En. Sec. 5070, Pol. C. 1895; re-en. Sec. 3503, Rev. C. 1907; re-en. Sec. 5320, R. C. M. 1921.

11-2912. (5321) **Mining claims.** Whenever mining claims have been located prior to the passage of this code, and where the same are prior in location to the claim of any occupant for other purposes, such mining rights, according to the metes and bounds so located and claimed, are not in any manner affected by the provisions of this chapter; nor must any sale be made nor any title be conveyed by reason of any sale of such lands so claimed for mining purposes, until after the occupancy of such mining claims shall have been abandoned by the holders thereof.

History: En. Sec. 5071, Pol. C. 1895; re-en. Sec. 3504, Rev. C. 1907; re-en. Sec 5321, R. C. M. 1921.

11-2913. (5322) **Settlement of adverse claims.** In all cases of adverse claims or disputes arising out of conflicting claims to lands or boundary lines, the adverse claimants may submit the decision thereof to the

council of such city or town by an agreement in writing specifying particularly the subject matter in dispute, and may agree that their decision shall be final. The council must hear the proofs, and shall order a deed to be executed in accordance with the facts; but in all other cases of adverse claim the party out of possession shall commence his action in a court of competent jurisdiction within six months after the filing of the city or town plat in the office of the county clerk. In case such action be commenced, the plaintiff must serve a notice of lis pendens upon the mayor, who must thereupon stay all proceedings in the matter of granting any certificate or deed until the final decision of such suit; and upon presentation of a certified copy of the final judgment of such court in such action, the council must cause to be executed and delivered a deed of such premises, in accordance with the judgment. In case no such action be commenced within the time herein prescribed, the council must deliver a deed to the party in possession, as provided in this chapter.

History: En. Sec. 5072, Pol. C. 1895; re-en. Sec. 3505, Rev. C. 1907; re-en. Sec. 5322, R. C. M. 1921.

11-2914. (5323) **Notice of filing plat.** The said council must give public notice by advertising for four weeks in any newspaper published in said city or town, and if there be no newspaper published in said city or town, then by publication in some newspaper having the most general circulation in such city or town, and not less than five written or printed notices must be posted within the limits of such city or townsite; such notice must state that the plat thereof has been filed in the clerk's office. If any person, company, association, or any other claimant of lands in such city or town, fails, neglects, or refuses to make application to the council for a deed of conveyance to the lands so claimed, and to pay the sums of money specified in this article, within six months after the filing of said plat, the clerk must enter on his book the names of all such persons, with a description of the property or premises, and certify the same as delinquent for the amount of assessment certified to by such clerk as due, under this article; and at the expiration of thirty days after making such entries, if such application be not made and such assessment be not paid, the said council must advertise all such lots and parcels of land for sale, in the same manner as real estate is required to be advertised under execution.

History: En. Sec. 5073, Pol. C. 1895; re-en. Sec. 3506, Rev. C. 1907; re-en. Sec. 5323, R. C. M. 1921.

11-2915. (5324) **Sale of delinquent lands.** At the time of the sale mentioned in the advertisement, the marshal of the city or town must sell all such parcels of land so remaining delinquent at public auction to the highest bidder for cash, at some public place within the limits of the city or townsite; and he must give the purchaser at such sale a certificate of his purchase, setting forth therein the description of the premises sold, the amount paid, and that the same is subject to redemption, as prescribed in the net section; but no sale must be made for less than the whole amount

of assessments and the costs of making the sale, which costs shall be divided pro rata among the several parcels offered for sale.

History: En. Sec. 5074, Pol. C. 1895; re-en. Sec. 3507, Rev. C. 1907; re-en. Sec. 5324, R. C. M. 1921.

11-2916. (5325) **Redemption.** At any time within six months after such sale, the original claimant is entitled to redeem such premises by paying to the purchaser, or the clerk of the council for the purchaser, double the whole amount of the purchase money; but in case no redemption be made, the purchaser, his heirs or assigns, is entitled to demand and receive from the council a deed of such premises, which deed is absolute as against the parties delinquent, and entitles the grantee, his heirs or assigns, to writ of assistance from the district court having jurisdiction of the premises.

History: En. Sec. 5075, Pol. C. 1895; re-en. Sec. 3508, Rev. C. 1907; re-en. Sec. 5325, R. C. M. 1921.

11-2917. (5326) **Unclaimed lands.** If there be any unoccupied or vacant unclaimed lands within the limits of such city or townsite, the council must cause the same to be laid out and surveyed into suitable blocks and lots, and must reserve such portions as may be deemed necessary for public squares, churches, schoolhouse lots, parks, and levees, and cause all necessary roads, streets, lanes, and alleys to be laid out through the same and dedicated to public use; and the council may sell the same in suitable parcels to possessors of adjoining lands or to other persons of said town at a price not less than five dollars per acre or fraction of an acre; and in case two or more claimants apply for the same tract, or parcel of the same tract, they must sell the same by auction to the highest bidder. If any such lands remain unsold at the end of six months after the filing of the town plat, the council has power to sell such vacant lands at public or private sale in such manner and on such terms as they may deem advisable for the best interests of the town, and shall give deeds therefor to the several purchasers.

History: En. Sec. 5076, Pol. C. 1895; re-en. Sec. 3509, Rev. C. 1907; re-en. Sec. 5326, R. C. M. 1921.

11-2918. (5327) **School lots.** All school lots and parcels of land reserved for school purposes must be conveyed to the school trustees of the school district in which such city or town is situate, without cost or charge of any kind whatever.

History: En. Sec. 5077, Pol. C. 1895; re-en. Sec. 3510, Rev. C. 1907; re-en. Sec. 5327, R. C. M. 1921.

11-2919. (5328) **Payment of expenses—disposition of surplus moneys.** All expenses necessarily incurred or contracted by the carrying into effect of the provisions of this chapter are a charge upon the city or town treasury of each particular city or town ordering the work to be done, to be paid out of the treasury, upon the order of the council; and all moneys

paid for lands or to defray the expenses of carrying into effect the provisions of this chapter shall be paid into the city or town treasury by the officers receiving the same, and shall constitute a special fund, from which shall be paid all expenses, and the surplus, if any there be, shall be paid into the general fund.

History: En. Sec. 5078, Pol. C. 1895; re-en. Sec. 3511, Rev. C. 1907; re-en. Sec. 5328, R. C. M. 1921.

11-2920. (5329) **Informality not to invalidate.** No mere informality, failure, or omission on the part of any of the persons or officers named in this chapter invalidates the acts of such person or officer; but every certificate or deed granted to any person pursuant to the provisions of this chapter is conclusive evidence that all preliminary proceedings in relation thereto have been correctly taken and performed.

History: En. Sec. 5079, Pol. C. 1895; re-en. Sec. 3512, Rev. C. 1907; re-en. Sec. 5329, R. C. M. 1921.

11-2921. (5330) **City or townsite on school lands.** When the lands of such city or town are on a school section or subdivision thereof, and are owned by the state, the council may procure title and purchase the same from the state and dispose of the same in the manner provided in this chapter for the disposing of lands purchased from the United States.

History: En. Sec. 5080, Pol. C. 1895; re-en. Sec. 3513, Rev. C. 1907; re-en. Sec. 5330, R. C. M. 1921.

CHAPTER 30

ENTRY TOWNSITES ON PUBLIC DOMAIN FOR UNINCORPORATED CITIES AND TOWNS

Section 11-3001. District judge to enter at land office.
11-3002. Estimate of expenses.
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11-3024. Informalities or irregularities not to invalidate—legalizing deeds.
11-3025. City or townsite on school lands.
11-3026. District judge authorized to execute deeds—procedure.

11-3001. (5331) **District judge to enter at land office.** It is the duty of the judge of the district court of any county in this state to enter at the proper land office of the United States such quantity of land as the inhabitants of any unincorporated town, situated in the county of such district judge, may be entitled to claim in the aggregate, according to their population, in the manner required by the laws of the United States, and the regulations prescribed by the secretary of the interior of the United States, and to make and sign all necessary declaratory statements, certificates, and affidavits, or other instruments requisite to carry into effect the intentions of this chapter, and the intention of the act of Congress of the United States entitled "An act for the relief of the inhabitants of cities and towns upon the public lands, approved March second, eighteen hundred and sixty-seven," and to make proof, when required, of the facts necessary to establish the claim of such inhabitants to the lands so granted by said act of Congress.

History: En. Sec. 5100, Pol. C. 1895; re-en. Sec. 3514, Rev. C. 1907; re-en. Sec. 5331, R. C. M. 1921.

NOTE.—For earlier acts, see Secs. 2011 to 2030, Fifth Division Compiled Statutes 1887.

Compiler's Note

Act of March 2, 1867, ch. 177, 14 Stat. 541 is compiled in the United States Code as Tit. 43, sec. 718 et seq.

Unincorporated Town as Entity

In this section there is a distinct recognition of a town as an entity without incorporation or municipal charter. State ex rel. Powers v. Dale, 47 M 227, 229, 131 P 670.

Collateral References

Municipal Corporations⇐42; Public Lands⇐39, 41; Towns⇐4.

62 C.J.S. Municipal Corporations § 83; 73 C.J.S. Public Lands § 57; 87 C.J.S. Towns § 11.

11-3002. (5332) **Estimate of expenses.** The district judge of any county in this state, whenever he is so requested by a petition signed by not less than five residents, householders in any unincorporated town, whose names appear upon the assessment roll for the year preceding such application—which petition shall set forth the existence, name, and locality of such town; whether such town is situated on surveyed or unsurveyed lands, and if on surveyed lands the quarter-sections or lesser subdivisions covered thereby must be stated; the estimated number of its inhabitants; the number of separate lots or parcels of land within such townsite, and the amount of land to which they are entitled under said act of Congress—must estimate the cost of entering such land, and of the survey and recording of the same, and must endorse such estimate upon said petition, and upon receiving from any of the parties interested the amount of money mentioned in such estimate, the said district judge may cause an enumeration of the inhabitants of such town to be made by some competent person, who must be appointed for that purpose by such judge; and such enumeration must be returned by the person making the same, exhibiting therein names of all the heads of families and occupants of lots, lands, or premises within such townsite, alphabetically arranged, verified by his oath, to the judge.

History: En. Sec. 5101, Pol. C. 1895; re-en. Sec. 3515, Rev. C. 1907; re-en. Sec. 5332, R. C. M. 1921.

11-3003. (5333) **Survey of lands.** The judge must thereupon cause a survey to be made by some competent person of the lands which the inhabitants of said town may be entitled to claim under the said act of Congress, located according to the legal subdivision of the sections and by the section lines of the United States, and the same must be distinctly marked by suitable monuments. Such surveys must further particularly designate all streets, roads, lanes, and alleys, public squares, churches, school lots, levees, or parks, cemeteries, and commons, as the same exist, and have been heretofore dedicated in any manner to public use; and by measurement, the precise boundaries and area of each and every lot or parcel of land and premises claimed by any person, corporation, or association, within said townsite, must be designated on the plat, showing the name or names of the possessor or occupant and claimant, if other than the occupant, of each particular lot and parcel of land. In case of any disputed claim as to lots, lands, premises, or boundaries, the said surveyor, if the same be demanded by any person, shall designate the lines (in different color from the body of the plat) of such part of any premises so disputed or claimed adversely. A plat thereof must be made in triplicate, on a scale of not less than eighty feet to one inch, which shall be duly certified under oath by the surveyor, one of which shall be filed with the county clerk of the county wherein the town is situated, one must be deposited with the judge, and one must be deposited with the justice of the peace resident in or nearest to such town.

History: En. Sec. 5102, Pol. C. 1895; re-en. Sec. 3516, Rev. C. 1907; re-en. Sec. 5333, R. C. M. 1921.

Collateral References

Municipal Corporations⇐12 (1); Public Lands⇐39 (6).

62 C.J.S. Municipal Corporations § 20; 73 C.J.S. Public Lands § 63.

11-3004. (5334) **Plats as public records—contents of plats.** These plats are public records, and must be accompanied with a copy of the field notes, and the county clerk shall make a record thereof in a book to be kept by him for that purpose. The surveyor must number the blocks, as divided by the roads and streets opened at the time of making such survey, and must number the several lots consecutively in each block, and all other parcels of land within said townsite surveyed as herein provided, which said numbers are a sufficient description of any parcel of land in said plat when mentioned by reference to such town plats.

History: En. Sec. 5103, Pol. C. 1895; re-en. Sec. 3517, Rev. C. 1907; re-en. Sec. 5334, R. C. M. 1921.

11-3005. (5335) **Notice of survey to be given.** Before proceeding to make such survey, at least ten days' notice must be given by the judge, by posting within the limits of such townsite not less than five written or printed notices of the time when such survey shall commence, and by publication thereof in a newspaper published in such town, if one there be. The survey of said town lands must be made to the best advantage, and at the least expense to the holders and claimants thereof; and

the said judge is hereby authorized to receive bids for such surveying, and to let the same by contract to the lowest competent bidder.

History: En. Sec. 5104, Pol. C. 1895; re-en. Sec. 3518, Rev. C. 1907; re-en. Sec. 5335, R. C. M. 1921.

11-3006. (5336) **What dedicated to public use.** All streets, roads, lanes, and alleys, public squares, cemeteries, parks, levees, school lots, and commons, surveyed, marked, and platted on the map of any townsite, as prescribed and directed by the provisions of this chapter, are hereby declared to be dedicated to public use, by the filing of such town plat in the office of the county clerk, and are inalienable, unless by special order of the board of commissioners of the county, so long as such town shall remain unincorporated; and if such town at any time thereafter becomes incorporated, the same becomes the property of such town or city, and must be under the care and subject to the control of the council or other municipal authority of such town or city.

History: En. Sec. 5105, Pol. C. 1895; re-en. Sec. 3519, Rev. C. 1907; re-en. Sec. 5336, R. C. M. 1921.

Unincorporated Town as Entity

In this section there is a distinct recognition of a town as an entity without incorporation or municipal charter. State ex rel. Powers v. Dale, 47 M 227, 229, 131 P 670.

11-3007. (5337) **What plat must show.** Such plat must show the same matters as are contained in section 11-602 of this code, and must be made, filed and kept in the same manner as prescribed in section 11-609 of this code.

History: En. Sec. 5106, Pol. C. 1895; re-en. Sec. 3520, Rev. C. 1907; re-en. Sec. 5337, R. C. M. 1921.

11-3008. (5338) **Assessment for expenses.** Each lot or parcel of said land having thereon valuable improvements, or buildings ordinarily used as dwellings or for business purposes, not exceeding one-tenth of one acre in area, must be rated and assessed by the judge at the sum of one dollar; each lot or parcel of such lands exceeding one-tenth, and not exceeding one-eighth of one acre in area, must be rated and assessed at the sum of one dollar and fifty cents; each lot or parcel of such lands exceeding in area one-eighth of one acre, and not exceeding one-quarter of an acre in area, must be rated and assessed at the sum of two dollars; and each lot and parcel of such lands exceeding one-quarter of an acre, and not exceeding one-half of one acre in area, must be rated and assessed at the sum of two dollars and fifty cents; and each lot or parcel of land so improved exceeding one-half an acre in area must be assessed at the rate of two dollars and fifty cents for each half an acre or fractional part over half an acre; and every lot or parcel of land inclosed, which may not be otherwise improved, or uninclosed, claimed by any persons, corporation, or association, must be rated and assessed at the rate of two dollars per acre or fractional part over an acre; and where, upon one parcel of land, there are two or more separate buildings, occupied or used ordinarily as dwell-

ings, or for business purposes, each such building, for the purposes of this section, is considered as standing on a separate lot of land, but the whole of such premises may be conveyed in one deed; which moneys so assessed must constitute a fund from which must be reimbursed or paid the moneys necessary to pay the government of the United States for said town lands, and interest thereon, if such moneys have been loaned or advanced for the purpose and expenses of their location, entry, and purchase, and the costs and expenses attendant upon the making of such survey and recording thereof.

History: En. Sec. 5107, Pol. C. 1895; re-en. Sec. 3521, Rev. C. 1907; re-en. Sec. 5338, R. C..M. 1921.

11-3009. (5339) **Disposition of surplus funds.** Any sum of money remaining, after defraying all the necessary expenses of location, entry, surveying, platting, and recording of lands, and the expenses of the judge hereinafter mentioned, must be deposited in the county treasury, to the credit of the fund of each particular town, and kept separate by the county treasurer, to be paid out by him only on the written order of such judge, until after the expiration of the time for a final settlement of the affairs of such town lands, as hereinafter provided, at which time any and all balances of moneys so remaining to the credit of each town shall be transferred by such county treasurer to the school fund of the particular school district in which said town is situated.

History: En. Sec. 5108, Pol. C. 1895; re-en. Sec. 3522, Rev. C. 1907; re-en. Sec. 5339, R. C. M. 1921.

11-3010. (5340) **Claimants to make affidavits.** Every person, corporation, or association, claimant of any town lot or parcel of land within the limits of such townsite, must present to the judge, within six months after the plat has been filed in the office of the county clerk, his, her, or its affidavit, verified in person, or by duly authorized agent or attorney, in which must be concisely stated the facts constituting the possession or right of possession of the claimant, and that the claimant is entitled to the possession thereof, as against all other persons, to the best of his knowledge and belief, to which must be attached a copy of so much of the plat of the townsite as will fully exhibit the particular lot or parcel of land so claimed, with the abuttals; and every such claimant, at the time of filing such affidavit, must pay to such judge such sum of money as such judge shall thereon certify to be due for the assessment mentioned in section 11-3008 of this code, together with the further sum of five dollars, to be appropriated to the payment of the expenses incurred in carrying out the provisions of this chapter, and the judge must thereupon give to such claimant a certificate containing a description of the lot or parcel of land claimed, and setting forth the amounts paid thereon by such claimant. The judge must procure a bound book for each town in his county, wherein he must make proper entries of the substantial matters contained in every such certificate issued by him, numbering the same in consecutive

order, setting forth the name of the claimant or claimants in full, date of issue, and description of lot or lots claimed.

History: En. Sec. 5109, Pol. C. 1895; re-en. Sec. 3523, Rev. C. 1907; re-en. Sec. 5340, R. C. M. 1921.

11-3011. (5341) **Additional assessments to pay expenses.** If it is found that the amounts hereinbefore specified as assessments and fees for costs and expenses prove to be insufficient to cover and defray all the necessary expenses, the judge must estimate the deficiency, and assess such deficiency pro rata upon all the lots and parcels of lands in such town, and declare the same upon the basis set down in section 11-3008 of this code, which additional amount, if any, may be paid by the claimant at the time when the certificate hereinbefore mentioned, or at the time when the deed of conveyance hereinafter provided for is issued.

History: En. Sec. 5110, Pol. C. 1895; re-en. Sec. 3524, Rev. C. 1907; re-en. Sec. 5341, R. C. M. 1921.

11-3012. (5342) **Deeds to be delivered in six months — adverse claims.** At the expiration of six months after the issuance of the certificate mentioned in the preceding section, if there has been no adverse claim filed in the meantime, the judge must make, execute, acknowledge, and deliver to each claimant or to his, her, or its heirs, administrators, or assigns, a good and sufficient deed of the premises described in the application of the claimant originally filed. No conveyance of any such lands, made as in this chapter provided, concludes the rights of third persons; but such third persons may have their actions in the premises to determine the alleged interest in such lands against such grantee, his heirs, or assigns, to which they may deem themselves entitled either in law or equity. No action for the recovery of the possession of such premises, or any portion thereof, must be maintained in any court against the grantee named therein, or against his, her, or its assigns, unless such action is commenced within two years after such deeds have been filed for record in the office of the county clerk of the county where such lands are situated. Nothing herein must be construed to extend the time of limitation prescribed by law for the commencement of actions upon a possessory claim or title to real estate when such action is barred by law at the time of the passage of this code.

History: En. Sec. 5111, Pol. C. 1895; re-en. Sec. 3525, Rev. C. 1907; re-en. Sec. 5342, R. C. M. 1921.

Collateral References

Public Lands⇐39 (5), (8).
73 C.J.S. Public Lands § 68.

11-3013. (5343) **Mining claims.** Whenever mining claims have been located and held bona fide for mining purposes, such mining rights, according to the metes and bounds located and claimed, must not in any manner be affected by the provisions of this chapter; nor must any sale be made nor any title be conveyed by reason of any sale or pretended sale of such lands so claimed for mining purposes, until after the occupancy of such mining claims has been abandoned by the holders thereof.

History: En. Sec. 5112, Pol. C. 1895; re-en. Sec. 3526, Rev. C. 1907; re-en. Sec. 5343, R. C. M. 1921.

11-3014. (5344) **Adverse claims — actions for possession.** In all cases of adverse claims or disputes arising out of conflicting claims to lands or boundary lines, the adverse claimants may submit the decision thereof to the judge by an agreement in writing, specifying particularly the subject matter in dispute, and may agree that his decision shall be final; in which case the said judge may hear the proofs, and must execute a deed in accordance therewith; but in all other cases of adverse claim, the party out of possession must commence his action in a court of competent jurisdiction within six months after the filing of the town plat in the office of the county clerk. In case such action be commenced, the plaintiff must serve a notice of lis pendens upon the judge, who must thereupon stay all proceedings in the matter of granting any certificate or deed until the final decision of such suit; and upon presentation of a certified copy of the final judgment of such court in such action, the judge must execute and deliver a deed of such premises in accordance with the judgment. In case no such action is commenced within the time herein prescribed, the judge must deliver his deed to the party in possession, as provided in section 11-3012 of this code.

History: En. Sec. 5113, Pol. C. 1895; re-en. Sec. 3527, Rev. C. 1907; re-en. Sec. 5344, R. C. M. 1921.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81 (a), Table A.

11-3015. (5345) **Notice of filing plat.** The judge must give public notice, by advertisement, for four weeks in some newspaper published in the county, if one there be, and if there be no newspaper published in said county, then by not less than five written or printed notices posted within the limits of such townsite, that the plat thereof has been filed in the county clerk's office; and if any person, company, or association, or other claimants of lands in such town, fails, neglects, or refuses to make application to the judge for a deed, and to pay the sum specified, within six months after the filing of said plat, the judge must enter on his book the names of all such persons, with a description of the property or premises, and certify the same as delinquent for the amount of assessments certified to by such judge as due under section 11-3008 of this code; and at the expiration of thirty days after making such entries, if such application be not made and such assessment be not paid, the judge must advertise all such lots and parcels of land for sale in the same manner as real estate is required to be advertised under execution.

History: En. Sec. 5114, Pol. C. 1895; re-en. Sec. 3528, Rev. C. 1907; re-en. Sec. 5345, R. C. M. 1921.

11-3016. (5346) **Sale of delinquent lands.** At the time of sale mentioned in said advertisement, the judge must sell all such parcels of land so remaining delinquent, by public auction, to the highest bidder for cash, at some public place within the limits of said townsite; and he must give to the purchaser at such sale a certificate of his purchase, setting forth therein a description of the premises sold, the amount paid, and that the same is subject to redemption, as prescribed in the next section; but no sale must be made for less than the whole amount of assessments, and

the costs of making the sale, which costs must be divided pro rata among the several parcels offered for sale.

History: En. Sec. 5115, Pol. C. 1895; re-en. Sec. 3529, Rev. C. 1907; re-en. Sec. 5346, R. C. M. 1921.

11-3017. (5347) **Redemption.** At any time within six months after such sale, the original claimant is entitled to redeem such premises by paying to the purchaser, or to the judge for the purchaser, double the whole amount of the purchase money; but in case no redemption be made, the purchaser, his heirs, or assigns, is entitled to demand and receive from the judge a deed of such premises, which deed is absolute as against the parties delinquent, and entitles the grantee, his heirs, or assigns, to a writ of assistance from the district court having jurisdiction of the premises.

History: En. Sec. 5116, Pol. C. 1895; re-en. Sec. 3530, Rev. C. 1907; re-en. Sec. 5347, R. C. M. 1921.

11-3018. (5348) **Laying out and sale of unoccupied or unclaimed lands.** If there be any unoccupied or vacant unclaimed lands within the limits of such city or townsite, the judge may cause the same to be laid out and surveyed into suitable blocks and lots, and must reserve such portions as may be deemed necessary for public squares, churches, schoolhouse lots, parks and levees, and cause all necessary roads, streets, lanes, and alleys to be laid out through the same and dedicated to public use; and the judge may sell the same in suitable parcels to possessors of adjoining lands residing thereon, or to other persons, at a price not less than ten dollars per lot; and in case two or more claimants apply for the same lot or lots, he must sell the same by auction to the highest bidder for cash.

If any such lots remain unsold at the end of six months after the filing of the town plat, the said judge must sell said unclaimed lots, on application, at public auction to the highest bidder for cash, and give deeds therefor to the several purchasers, but, nevertheless, the judge may sell and he is hereby empowered to sell and execute deeds for any unoccupied, vacant, and unsurveyed portions of a townsite, without first causing the same to be surveyed or platted into blocks, lots, roads, streets, and alleys, or otherwise subdivided, whenever it shall be made to appear to the judge, by a written application to purchase the same, established by evidence that the unsurveyed portions of the townsite sought to be purchased are irregular and fragmentary strips or pieces of land within the exterior boundaries of the townsite, and that they are unoccupied and vacant, and that it would be an unnecessary expense and impracticable to cause the same to be first surveyed or platted into blocks, lots, roads, streets, and alleys, or otherwise subdivided; and the sale of such unoccupied, vacant, and unsurveyed portions of a townsite shall be conducted, as near as may be, in the manner provided for the sale of town lots, except that the price to be paid for any one irregular, fragmentary, unoccupied, vacant, and unsurveyed portion of a townsite shall not be less than one hundred dollars; and all deeds heretofore executed by the judge who has

sold and conveyed irregular, fragmentary, unoccupied, vacant, and unsurveyed portions of a townsite are hereby confirmed and made lawful, valid, and effectual as if such, or any, unsurveyed portion of the townsite had first been surveyed and platted into blocks, lots, roads, streets, and alleys or otherwise subdivided.

History: En. Sec. 5117, Pol. C. 1895; amd. Sec. 1, Ch. 99, L. 1903; amd. Sec. 1, Ch. 130, L. 1907; re-en. Sec. 3531, Rev. C. 1907; amd. Sec. 1, Ch. 22, L. 1911; re-en. Sec. 5348, R. C. M. 1921.

References

State ex rel. Hicklin v. Webster, 28 M 104, 109, 72 P 295.

11-3019. (5349) **School lots.** All school lots and parcels of land reserved for school purposes, as aforesaid, by order of the judge, must be conveyed to the school trustees of the school district in which such town is situate, without cost or charge of any kind whatever.

History: En. Sec. 5118, Pol. C. 1895; re-en. Sec. 3532, Rev. C. 1907; re-en. Sec. 5349, R. C. M. 1921.

11-3020. (5350) **Vacancy in office of judge.** In case a vacancy occurs from any cause in the office of district judge during the pendency of any of the proceedings to be taken under this chapter, upon the election or appointment of a successor, it is the duty of the county clerk to make out a certificate, under seal, showing the facts and name of such successor, and file the same in his office, and record such certificate in a book of deeds, and attach the original to the townsite book in his office.

History: En. Sec. 5119, Pol. C. 1895; re-en. Sec. 3533, Rev. C. 1907; re-en. Sec. 5350, R. C. M. 1921.

11-3021. (5351) **Clerical work must be performed by clerk of district court.** All the clerical work under this chapter must be performed by the clerk of the district court, and the fees received therefor paid into the county treasury.

History: En. Sec. 5120, Pol. C. 1895; re-en. Sec. 3534, Rev. C. 1907; re-en. Sec. 5351, R. C. M. 1921.

11-3022. (5352) **Accounts of judge.** Every district judge, when fulfilling the duties imposed upon him by the act of Congress aforesaid and by this chapter, must keep a correct account of all moneys received and paid out by him. He must deposit all surplus money with the county treasurer of his county, and at the end of one year from the time when the town plat of any town is filed in the county clerk's office, he must settle up all the affairs pertaining to said town, and pay over to the county treasurer all moneys belonging to said town, for the use and benefit of the school district in which said town may be situate. If any claims to lands in such town are the subject of litigation, the same must be finally settled by such judge whenever the final judgment has been rendered.

History: En. Sec. 5121, Pol. C. 1895; re-en. Sec. 3535, Rev. C. 1907; re-en. Sec. 5352, R. C. M. 1921.

11-3023. (5353) **Deposit of books with county clerk.** Whenever the affairs of any such town shall be finally settled and disposed of by such judge, he shall deposit all books and papers relating thereto in the office of the county clerk of his county, to be thereafter kept in the custody of the county clerk as public records.

History: En. Sec. 5122, Pol. C. 1895; re-en. Sec. 3536, Rev. C. 1907; re-en. Sec. 5353, R. C. M. 1921.

11-3024. (5354) **Informalities or irregularities not to invalidate—legalizing deeds.** No mere informality, failure, or omission, on the part of any person or officer named in this chapter, invalidates the acts of such person or officer, but every certificate or deed granted to any person, pursuant to the provisions of this chapter, is conclusive evidence that all preliminary proceedings in relation thereto have been correctly taken and performed. And if the original or first deed executed by the district judge granting and conveying any lot or lots be lost or destroyed, or cannot be found, and if such deed or deeds so executed have not been recorded in the office of the county clerk of the county in which the property is situated, the district judge shall, upon written application stating the facts, execute and deliver another deed or deeds, as the case may be, to the purchaser of such lot or lots, or to his heirs or grantees, upon a showing sustained by evidence satisfactory to the district judge that the original or first deed or deeds were executed and have been lost or destroyed, or cannot be found, and have not been recorded; and all deeds heretofore executed by the district judge in lieu of the original or first deed or deeds, which have been lost or destroyed, or which could not be found, and which have not been recorded in the office of the county clerk of the county in which the property is situated, are hereby legalized, confirmed, and made valid and effectual, as if such deed or deeds were the original, first, and only deed or deeds executed therefor.

History: En. Sec. 5123, Pol. C. 1895; re-en. Sec. 3537, Rev. C. 1907; amd. Sec. 1, Ch. 23, L. 1911; re-en. Sec. 5354, R. C. M. 1921.

Collateral References

Municipal Corporations⇨29 (1); Public Lands⇨39 (1).

62 C.J.S. Municipal Corporations § 68; 73 C.J.S. Public Lands § 71.

11-3025. (5355) **City or townsite on school lands.** When the lands of such city or town are on a school section or subdivision thereof, and are owned by the state, the council may procure title, and purchase the same from the state, and dispose of the same in the manner provided in this chapter for disposing of lands purchased from the United States.

History: En. Sec. 5124, Pol. C. 1895; re-en. Sec. 3538, Rev. C. 1907; re-en. Sec. 5355, R. C. M. 1921.

11-3026. (5356) **District judge authorized to execute deeds—procedure.** Wherever an entry has heretofore been made at a land office by a probate court of any county in the territory, now state of Montana, for a tract of land for a townsite, under the provisions of an act of Congress entitled, "An act for the relief of the inhabitants of cities and towns upon public lands," approved March second, eighteen hundred sixty-seven, or

other and subsequent acts of Congress relating to entering lands for townsite purposes, and such entry shall have been allowed and patent therefor shall have been issued by the United States to such probate court, or a judge thereof and it shall appear to the district judge of the county in which such townsite is situated by a verified petition filed with the clerk of said district court, that no deed has been issued by the probate judge of such county or the district judge thereof as ex officio probate judge, for any lot or tract of land situated in such townsite other than streets, alleys, parks, or school sites, or that a deed for any such lot or tract has been issued, but has not been recorded, and has been lost or cannot be found, the district judge shall set a day for the hearing of said petition, and cause notice thereof to be published in a newspaper published in the county wherein such lands are situated for four successive weeks, and upon proof of such publication being made, and at such hearing shall examine such petition and claim thereunder, and hear such proof as the claimant or claimants may submit to establish his or their claims thereto; and if the district judge shall find that the claimant or claimants is in possession of such lot or tract of land or shall by reference to abstracts of title or other evidence produced in support thereof, find that the title to such lot or tract of land has been derived and deraigned from the person or persons who may have originally entered such lot or purchased the same at a sale thereof, as provided by the laws of the territory of Montana, or the state of Montana, and no conflicting claims shall have been filed, the said district judge shall, upon the payment of the fees originally provided for the issuance of a deed for such lot or lots, proceed forthwith to make and issue to such claimant or claimants a good and sufficient deed for such lot or tract of land.

History: En. Sec. 1, Ch. 9, L. 1919; re-en. Sec. 5356, R. C. M. 1921.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

CHAPTER 31

COMMISSION FORM OF GOVERNMENT

Section 11-3101. Any city may reorganize under commission form.
11-3102. Submission to electors—petition and order of election.
11-3103. Proclamation of election.
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11-3106. Calling of election to elect city officers.
11-3107. Manner of conducting election—canvassing votes.
11-3108. Laws governing city—ordinances—territorial limits and property.
11-3109. Number of councilmen—vacancies, how filled.
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11-3111. Tenure of office—expiration of term.
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11-3117. City to be governed by mayor and councilmen—right to vote.
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11-3121. Supervisory powers of mayor and councilmen—election of officers—police judge.
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11-3124. Repealed.
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11-3134. Taking effect and suspension of ordinances.
11-3135. Abandonment of commission form.
11-3136. Requirements of petitions.
11-3137. Effect of act upon existing laws.

11-3101. (5366) **Any city may reorganize under commission form.** Any city may abandon its organization and reorganize under the provisions of this act, by proceeding as hereinafter provided.

History: En. Sec. 1, Ch. 57, L. 1911; re-en. Sec. 5366, R. C. M. 1921.

References

Shapard v. City of Missoula, 49 M 269, 280, 141 P 544; State ex rel. Lease v. Wilkinson, 59 M 327, 333, 196 P 878; State ex rel. Daly v. Dryburgh, 62 M 36, 45, 203 P 508; State ex rel. Helena Housing Authority v. City of Helena, 125 M 592, 242 P 2d 250, 251.

Collateral References

Municipal Corporations⇐48 (1).

62 C.J.S. Municipal Corporations § 88 et seq.

37 Am. Jur. 685, Municipal Corporations, § 72 et seq.

Commission and other modern forms of municipal government as affecting liability of municipality for torts. 30 ALR 473.

Constitutionality of city manager or commission form of municipal government. 67 ALR 737.

11-3102. (5367) **Submission to electors—petition and order of election.** Upon a petition being filed with the city council, signed by not less than twenty-five per cent of the qualified electors of such city registered for the last preceding general city election, praying that the question of reorganization under this act be submitted to the qualified electors of such city, said city council shall thereupon, and within thirty days thereafter, order a special election to be held, at which election the question of reorganization of such city, under the provisions of this act, shall be submitted to the qualified electors of such city.

Such order of the city council shall specify therein the time when such election shall be held, which must be within ninety days from the date of the filing of such petition.

History: En. Sec. 2, Ch. 57, L. 1911; amd. Sec. 1, Ch. 2, L. 1915; re-en. Sec. 5367, R. C. M. 1921.

11-3103. (5368) **Proclamation of election.** Upon the city council ordering such special election to be held, the mayor of such city shall issue a proclamation setting forth the purpose for which such special election is called, and the date of holding such special election, which procla-

mation shall be published for ten consecutive days in each daily newspaper published in said city, if there be such, otherwise once a week for two consecutive weeks in each weekly newspaper published therein, and such proclamation shall also be posted in at least five public places within such city.

History: En. Sec. 3, Ch. 57, L. 1911;
re-en. Sec. 5368, R. C. M. 1921.

11-3104. (5369) **Ballots—form.** At such election the ballots to be used shall be printed upon plain, white paper, and shall be headed "Special election for the purpose of submitting to the qualified electors of the city of ..... the question of reorganization of the city of ..... under chapter (name of chapter containing this act) of the acts of the twelfth legislative assembly," and shall be substantially in the following form:

For reorganization of the city of ..... under chapter (name of chapter containing this act) of the act of the twelfth legislative assembly.

Against reorganization of the city of ..... under chapter (name of chapter containing this act) of the acts of the twelfth legislative assembly.

Such election shall be conducted and vote canvassed and result declared in the same manner as provided by law in respect to other city elections.

History: En. Sec. 4, Ch. 57, L. 1911;
re-en. Sec. 5369, R. C. M. 1921.

11-3105. (5370) **Certificate of result of election—no further election for two years.** If such proposition is adopted, the mayor shall transmit to the governor, to the secretary of state, and to the county clerk and recorder, each, a certificate stating that such proposition was adopted.

If such proposition shall not be adopted at such special election, such proposition shall not again be submitted to the electors of such city within a period of two years thereafter.

History: En. Sec. 5, Ch. 57, L. 1911;
re-en. Sec. 5370, R. C. M. 1921.

11-3106. (5371) **Calling of election to elect city officers.** If a majority of the votes cast at such election shall be in favor of such proposition, the city council must, at its first regular meeting held thereafter, order a special election to be held for the purpose of electing a mayor and the number of councilmen to which such city shall be entitled, which order shall specify the time of holding such election, which must be within ninety days after the making of said order, and the mayor shall thereupon issue a proclamation setting forth the purposes for which such special election is called and the day of holding the same, which proclamation shall be published for ten successive days in each daily newspaper published in such city, if there be such, otherwise once a week for two consecutive weeks in each weekly newspaper published therein, and a copy there-

of shall also be posted at each voting place within said city, and also in at least ten of the most public places in said city.

History: En. Sec. 6, Ch. 57, L. 1911; amd. Sec. 2, Ch. 2, L. 1915; re-en. Sec. 5371, R. C. M. 1921.

Collateral References
Municipal Corporations⇐129.
62 C.J.S. Municipal Corporations § 468.
37 Am. Jur. 688, Municipal Corporations, § 75.

11-3107. (5372) **Manner of conducting election — canvassing votes.** Such election shall be conducted, the vote canvassed, and result declared in the same manner as provided by law in respect to other city elections.

History: En. Sec. 7, Ch. 57, L. 1911; re-en. Sec. 5372, R. C. M. 1921.

11-3108. (5373) **Laws governing city—ordinances—territorial limits and property.** All laws governing cities of the first, second, and third classes, and not inconsistent with the provisions of this act, shall apply to and govern cities organized under this act. All bylaws, ordinances, and resolutions lawfully passed and in force in any such city under its former organization shall remain in force until altered or repealed by the council elected under the provisions of this act. The territorial limits of such city shall remain the same as under the former organization, and all rights and property of every description, which were vested in any such city under its former organization, shall vest in the same under the organization herein contemplated, and no right or liability either in favor of or against it, existing at the time, and no suit or prosecution of any kind shall be affected by such change, unless otherwise provided for in this act.

History: En. Sec. 8, Ch. 57, L. 1911; re-en. Sec. 5373, R. C. M. 1921.

Collateral References
Municipal Corporations⇐48 (2).
62 C.J.S. Municipal Corporations § 95 et seq.

11-3109. (5374) **Number of councilmen—vacancies, how filled.** In every city of the third class, there shall be a mayor and two councilmen; in every city of the second class, a mayor and two councilmen; in every city of the first class having a population of less than twenty-five thousand (25,000), a mayor and two (2) councilmen, and in every city of the first class having a population of twenty-five thousand (25,000), or more, a mayor and four (4) councilmen, and the mayor and all councilmen shall be elected at large.

Vacancies in the office of mayor or councilmen shall be filled by appointment made by a majority vote of the remaining members of the council, and if, in filling such vacancy, a tie vote should occur, then the person to fill said vacancy shall be determined by lot in such manner as said council may provide. A person appointed to fill any such vacancy shall hold his office until the next general election and until his successor is elected and qualified. A person elected to fill a vacancy shall hold office until the expiration of the term for which the person he succeeds was elected.

History: En. Sec. 9, Ch. 57, L. 1911; re-en. Sec. 5370, R. C. M. 1921; amd. Sec. 1, Ch. 18, L. 1945.

Collateral References
Municipal Corporations⇐126, 149 (1).
62 C.J.S. Municipal Corporations §§ 465, 495 et seq.

11-3110. (5375) **Beginning of term of office.** The mayor and councilmen elected at such special election shall qualify, and their terms of office shall begin on the first Monday after their election, and the terms of office of the mayor and councilmen or aldermen in such city in office at the beginning of the term of office of the councilmen first elected under the provisions of this act shall then cease and determine, and the terms of office of all their appointed officers in force in such city, except as hereinafter provided, shall cease and determine as soon as the council shall by resolution declare.

History: En. Sec. 10, Ch. 57, L. 1911; re-en. Sec. 5375, R. C. M. 1921.

Collateral References
Municipal Corporations⇐149 (2).
62 C.J.S. Municipal Corporations § 496.

11-3111. (5376) **Tenure of office—expiration of term.** The terms of office of the mayor and all councilmen elected at such special election shall expire on the first Monday in May of the year following their election. At the first regular city election held in the year in which the terms of office of the mayor and councilmen elected at such special election shall expire, a mayor and two councilmen shall be elected in cities having a population of less than twenty-five thousand. The mayor elected at such first general city election shall hold office for two years; one of the councilmen elected at such first city election shall hold office for one year; and the other of such councilmen elected at such first general city election shall hold office for two years, beginning with the first Monday in May of that year; a mayor and four councilmen shall be elected in cities having a population of twenty-five thousand or more; and the mayor elected at such first general city election shall hold office for two years. Two of the councilmen elected at such first general city election shall hold office for one year, and the other two of the councilmen elected at such first general city election shall hold office for two years, beginning with the first Monday in May of that year; and the terms of office of the mayor and all councilmen thereafter elected shall be two years.

The councilmen elected at the first general city election shall decide by lot in such manner as they may select, which thereof shall hold the office of councilman the term of which expires one year thereafter, and which thereof shall hold the office of councilman, the term of which expires two years thereafter.

History: En. Sec. 11, Ch. 57, L. 1911; re-en. Sec. 5376, R. C. M. 1921.

11-3112. (5377) **Nomination of candidates — primary election.** (1) Candidates to be voted for at all general municipal elections at which a mayor or councilmen are to be elected under the provisions of this act shall be nominated by a primary election, and no other names shall be placed upon the general ballot except those selected in the manner hereinafter prescribed. The primary election for such nominations shall be held on the second Monday preceding the municipal election. The judges of election appointed for the municipal election shall be the judges of the primary election, and it shall be held at the same places, as far as possible,

and the polls shall be opened and closed at the same hours, with the same clerks as are required for said general municipal election.

(2) Any qualified elector of said city who is the owner of any real estate situated therein, desiring to become a candidate for mayor or councilman, shall, at least ten days prior to said primary election, file with the city clerk a statement of such candidacy in substantially the following form:

State of Montana, }
} ss.
County of ..... }

I, ..., being first duly sworn, say that I reside at ..... street, city of ....., county of ..... state of Montana; that I am a qualified voter therein; that I am a candidate for nomination to the office of (mayor or councilman) to be voted upon at the primary election to be held on the ..... Monday of ....., 19...., and I hereby request that my name be printed upon the official primary ballot for nomination by such primary election for such office.

(Signed) .....

Subscribed and sworn to (or affirmed) before me by .... on this ..... day of ....., 19.....

(Signed) .....

and shall at the same time file therewith the petition of at least twenty-five qualified voters requesting such candidacy. Each petition shall be verified by one or more persons as to qualifications and residence, with street number, of each of the persons so signing the said petition, and the said petition shall be in substantially the following form:

(3) Petition accompanying nominating statement.

The undersigned, duly qualified electors of the city of ...., and residing at the places set opposite our respective names hereto, do hereby request that the name of (name of candidate) be placed in the ballot as a candidate for nomination for (name of office) at the primary election to be held in such city on the ..... Monday of ....., 19..... We further state that we know him to be a qualified elector of said city and a man of good moral character, and qualified, in our judgment, for the duties of such office.

Names of qualifying electors.	Number.	Street.
.....	.....	.....
.....	.....	.....

(4) Each signer of a nomination paper shall sign but one such nomination paper for the same office, except where more than one officer is to be elected to the same office, in which case he may sign as many nomination papers as there are officers to be elected, and only one candidate shall be petitioned for or nominated in the same nomination paper.

(5) Immediately upon the expiration of the time of filing the statements and petitions for candidates, the said city clerk shall cause to be published for three consecutive days in all the daily newspapers published in the city, in proper form, the names of the persons as they are to

appear upon the primary ballots, and if there be no daily newspaper, then in two issues of any other newspapers that may be published in said city; and the said clerk shall thereupon cause the primary ballots to be printed, authenticated with a facsimile of his signature. Upon the said ballot the names of the candidates for mayor, arranged alphabetically, shall first be placed, with a square at the left of each name, and immediately below the words, "Vote for one." Following these names, likewise arranged in alphabetical order, shall appear the names of the candidates for councilmen, with a square at the left of each name, and below the names of such candidates shall appear the words, "Vote for (giving the number of persons to be voted for)." The ballot shall be printed upon plain substantial, white paper, and shall be headed:

Candidates for nomination for mayor and councilmen of the city of ..... at the

Primary Election;

but shall have no party designation or mark whatever. The ballots shall be in substantially the following form: (Place a cross in the square preceding the names of the parties you favor as candidates for the respective positions).

Official Primary Ballot.

Candidates for nomination for mayor and councilmen of the city of ..... at the

Primary Election.

For Mayor.

(Name of candidate.)

(Vote for one.)

For councilman.

(Name of candidate.)

Vote for ..... (Giving number to be voted for).

Official ballot attest:

(Signature) .....

City Clerk.

(6) Having caused said ballots to be printed, the said city clerk shall cause to be delivered at each polling place a number of said ballots equal to twice the number of such voters registered in such polling place at the last general municipal election. The persons who are qualified to vote at the general election shall be qualified to vote at such primary election and any person offering to vote may be orally challenged by any elector of the city upon any or all of the grounds set forth and specified in section 23-1220 of these codes, and the provisions of sections 23-1221 to 23-1228, inclusive, of these codes shall apply to all challenges made at such election. Judges of election shall immediately upon the closing of the polls count the ballots and ascertain the number of votes cast in such precinct for each of the candidates for mayor and councilman, and make return thereof to the city clerk upon the proper blanks to be furnished by the city clerk within six hours of the closing of the polls. On the day following the primary election the city clerk shall canvass said returns so received from all the polling precincts, and shall make and publish in all the newspapers in said city,

at least once, the result thereof. Said canvass by the city clerk shall be publicly made.

(7) If a mayor is to be elected at such municipal election, the two persons receiving the highest number of votes shall be the candidates for mayor. If one councilman is to be elected at such municipal election, the two persons receiving the highest number of votes shall be the candidates for councilmen. If two councilmen are to be elected at such general municipal election, the four persons receiving the highest number of votes shall be the candidates for councilmen, and if three councilmen are to be elected at such municipal election, the six persons receiving the highest number of votes shall be the candidates for councilmen, and if four councilmen are to be elected at such general municipal election, the eight persons receiving the highest number of votes shall be candidates for councilmen at such general election, and these shall be the only candidates for mayor and councilmen at such general election.

(8) All electors of cities under this act, who, by ordinances governing cities incorporated under the general municipal incorporation law, or by charter, would be entitled to vote for the election of officers at any general municipal election in such cities, shall be qualified to vote at all elections under this act; and the ballots to be used at such general municipal election shall be in the same general form as for such primary elections so far as applicable, and in all elections in such cities the election precincts, voting places, method of conducting the elections, canvassing of votes, and announcing the results shall be the same as by law provided for the election of officers in such cities so far as the same are applicable and not inconsistent with the provisions of this act.

(9) Every person who has been declared elected mayor or councilman, shall, within ten days thereafter, take and file with the city clerk his oath of office in the form and manner provided by law, and shall execute and give sufficient bond to the municipal corporation in the sum of ten thousand dollars, conditioned for the faithful performance of the duties of his office, which bond shall be approved by the judge of the district court of the county in which such city is situated, and filed with the clerk and recorder of the county in which such city is situated.

History: En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R. C. M. 1921.

Compiler's Note

The provisions of subdivision (9) of this section relating to the bonds of mayors and councilmen are superseded by sec. 6-601 et seq., enacted by Laws 1967, Ch. 67.

Collateral References

Elections⇨126 (1-7); Municipal Corporations⇨129, 144, 145.

29 C.J.S. Election §§ 91, 111-118, 130-134; 62 C.J.S. Municipal Corporations §§ 468, 490, 491.

11-3113. (5377.1) **Receipt of majority of all votes cast at primary election elects candidate and dispenses with general election, when.** Whenever, in any city operating under a commission form of government, at a primary election held in accordance with section 11-3112, a councilman or councilmen or a mayor and councilman or councilmen are to be elected, one person or candidate for any office to be filled shall receive a majority of all votes cast for such office, then such person or persons shall be deemed duly elected to the respective office or offices for which

he or they received such majority vote. If at such primary election more than two (2) persons are candidates for the same office and no one person receives a majority of all votes cast for such office then the names of the two persons receiving the highest number of votes shall be placed upon the general municipal election ballot under the provisions of section 11-3112. If, in any year, all officers to be elected are thus elected by a majority vote at such primary election, then, in that event, no general municipal election shall be held in said city for said year.

History: En. Sec. 1, Ch. 13, L. 1933.

11-3114. (5378) **Penalty for working for candidate.** Any person who shall agree to perform any services in the interest of any candidate for any office provided in this act, in consideration of any money or other valuable thing for such services performed in the interest of any candidate, shall be punished by a fine not exceeding three hundred dollars or be imprisoned in the county jail not exceeding thirty days.

History: En. Sec. 13, Ch. 57, L. 1911; re-en. Sec. 5378, R. C. M. 1921.

Collateral References
Elections⇐317.
29 C.J.S. Elections §§ 329, 356.

11-3115. (5378.1) **Fees for filing for office.** Every candidate for mayor and every candidate for councilman in cities operating under the commission form of government shall, at the time of filing his nominating petition pay the following fees to the city clerk as filing fee: A candidate for mayor shall pay twenty dollars ($20.00), and a candidate for councilman shall pay fifteen dollars ($15.00).

History: En. Sec. 1, Ch. 137, L. 1933.

11-3116. (5379) **Bribery—false answers concerning qualifications of elector—voting by disqualified person.** Any person offering to give a bribe, either in money or other consideration, to any elector, for the purpose of influencing his vote at any election provided in this act, or any elector entitled to vote at any such election receiving and accepting such bribe or other consideration; any person who agrees, by promise or written statement, that he will do, or will not do, any particular act or acts, for the purpose of influencing the vote of any elector or electors at any election provided in this act; any person making false answer to any of the provisions of this act relative to his qualifications to vote at such election; any person willfully voting or offering to vote at such election who has not been a resident of this state for one year next preceding said election, or who is not twenty-one years of age, or is not a citizen of the United States, or knowing himself not to be a qualified elector of such precinct where he offers to vote; any person knowingly procuring, aiding, or abetting any violation hereof, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in a sum not less than one hundred dollars nor more than five hundred dollars; and be imprisoned in the county jail not less than ten nor more than ninety days.

History: En. Sec. 14, Ch. 57, L. 1911; re-en. Sec. 5379, R. C. M. 1921.

Collateral References
Elections⇐316.

11-3117. (5380) **City to be governed by mayor and councilmen—right to vote.** Every city shall be governed by a mayor and councilmen, as provided in section 11-3109 of this code, each of whom shall have the right to vote on all questions coming before the council.

History: En. Sec. 15, Ch. 57, L. 1911; re-en. Sec. 5380, R. C. M. 1921.

Collateral References
Municipal Corporations⊂⇒81.
62 C.J.S. Municipal Corporations § 388.

11-3118. (5381) **Quorum of councilmen—recording votes and proceedings.** In cities having a mayor and two councilmen, the mayor and one councilman or two councilmen shall constitute a quorum; and the affirmative vote of the mayor and one councilman, or the affirmative vote of two councilmen, shall be necessary to adopt or reject any motion, resolution, or ordinances, or pass any measure, unless a greater number is provided for in this act.

In cities having a mayor and four councilmen, the mayor and two councilmen, or three councilmen, shall constitute a quorum, and the affirmative vote of the mayor and two councilmen, or the affirmative vote of three councilmen, shall be necessary to adopt or reject any motion, resolution, or ordinances, or pass any measure, unless a greater number is provided for in this act.

Upon every vote the ayes and nays shall be called and recorded, and every motion, resolution, or ordinance shall be reduced to writing and read before the vote is taken thereon.

History: En. Sec. 16, Ch. 57, L. 1911; re-en. Sec. 5381, R. C. M. 1921.

Collateral References
Municipal Corporations⊂⇒90, 97.
62 C.J.S. Municipal Corporations § 399.

11-3119. (5382) **Rights and powers of mayor—approval of measures.** The mayor shall preside at all meetings of the council; he shall have the same power to vote as other members of the council; he shall have no power to veto any measure; but every resolution or ordinance passed by the council must be signed by the mayor, or by two councilmen, and must be recorded before the same shall be in force.

History: En. Sec. 17, Ch. 57, L. 1911; re-en. Sec. 5382, R. C. M. 1921.

Collateral References
Municipal Corporations⊂⇒168.
62 C.J.S. Municipal Corporations § 543.

11-3120. (5383) **Powers of council — departments of government.** The council shall have and possess and the council and its members shall exercise all executive, legislative, and judicial powers and duties now had, possessed, and exercised by the mayor, city council, board of public works, park commissioners, board of police and fire commissioners, board of waterworks trustees, board of library trustees, attorney, assessor, treasurer, auditor, city engineer, and other executive and administrative offices in cities organized under the general municipal incorporation laws.

The executive and administrative powers, authority, and duties in such cities shall be distributed into and among departments as follows:

In cities having a mayor and two councilmen, into three departments—

1. A department of accounts, finance, and public property;

2. A department of public safety and charity;
3. A department of streets, public improvements, and parks.

In cities having a mayor and four councilmen, into five departments—

1. A department of public affairs;
2. A department of accounts and finance;
3. A department of public safety and charity;
4. A department of street and public improvements;
5. A department of parks and public property.

The council shall determine the powers and duties to be performed by each department of the city; shall prescribe the powers and duties of officers and employees; may assign particular officers and employees to one or more of the departments; may require an officer or employee to perform duties in two or more departments; and may make such rules and regulations as may be necessary or proper for the efficient and economical conduct of the business of the city.

History: En. Sec. 18, Ch. 57, L. 1911; re-en. Sec. 5383, R. C. M. 1921.

Collateral References

Municipal Corporations⇐60, 177.

62 C.J.S. Municipal Corporations §§ 106, 551.

11-3121. (5384) **Supervisory powers of mayor and councilmen—election of officers—police judge.** In cities having a mayor and two councilmen, the mayor shall be superintendent of the department of accounts, finance, and public property, and in cities having a mayor and four aldermen, the mayor shall be superintendent over the department of public affairs, and the mayor shall have general supervision over all departments of the city and over all matters connected with said city, and the council shall, at its first regular meeting after the election of its members, designate, by majority vote, one councilman to be superintendent over each department of the city, but such designation may be changed whenever it appears that the public service would be benefited thereby.

The council shall at its first regular meeting after the election of its members, or as soon thereafter as practicable, elect by majority vote the following officers: a city clerk, a city treasurer, a city attorney, a city auditor, a city engineer, a city physician, a chief of the fire department, a chief of the police department, a commissioner of weights and measures, a street commissioner, library trustees, cemetery trustees, and such other officers and assistants as shall be provided for by ordinance, and which may be necessary to the proper and efficient conduct of the affairs of the city; provided, however, that the council may, by ordinance, consolidate any of the offices the election to which is made by the council, and may require any officer elected by the council to perform the duties of any other officer; and shall appoint a police judge with the authority now conferred by existing laws. The tenure in office of a chief of the fire department and other officers of the fire department shall be governed by the provisions of section 11-1902 and section 11-1903 of this code. Any officer or assistant, elected or appointed by the council may be removed from office at any time by a majority vote of the members of the council, except as otherwise provided in this act.

History: En. Sec. 19, Ch. 57, L. 1911; re-en. Sec. 5384, R. C. M. 1921; amd. Sec. 1, Ch. 73, L. 1943.

Collateral References
Municipal Corporations⇐131, 177½.
62 C.J.S. Municipal Corporations §§ 468, 553.

11-3122. (5385) **Creation or discontinuance of other offices—compensation.** The council shall have power from time to time to create, fill, and discontinue offices and employment other than herein prescribed, according to their judgment of the needs of the city, and, by majority vote of all the members, remove any such officer or employee except as otherwise provided for in this act; and may, by resolution or otherwise prescribe, limit, or change the compensation of such officers or employees.

History: En. Sec. 20, Ch. 57, L. 1911; re-en. Sec. 5385, R. C. M. 1921.

Collateral References
Municipal Corporations⇐126.
62 C.J.S. Municipal Corporations § 466.

11-3123. (5386) **Place of office of councilmen—salaries and compensation.** The council shall have their office at the city hall, and their total compensation shall be as follows: In cities of the third class having a population of less than three thousand (3,000), the annual salary of the mayor shall not exceed six hundred dollars ($600.00), and the annual salary of each councilman shall not exceed five hundred dollars ($500.00); in cities of the third class having a population of three thousand (3,000) or more, the annual salary of the mayor shall not exceed one thousand dollars ($1,000.00), and the annual salary of each councilman shall not exceed nine hundred dollars ($900.00); in cities of the second class, the annual salary of the mayor shall not exceed one thousand six hundred and fifty dollars ($1,650.00), and the annual salary of each councilman shall not exceed one thousand five hundred dollars ($1,500.00); in cities of the first class having a population of less than thirty thousand (30,000), the annual salary of the mayor shall not exceed four thousand five hundred dollars ($4,500.00), and the annual salary of each councilman shall not exceed three thousand eight hundred dollars ($3,800); in cities of the first class having a population of thirty thousand (30,000) and over, the annual salary of the mayor shall not exceed four thousand eight hundred dollars ($4,800.00), and the annual salary of each councilman shall not exceed four thousand dollars ($4,000.00).

Any increase in salary occasioned by the advance in class or increase in population of any city shall commence with the month next after the publication of the census showing such advance in class or increase in population.

Every other officer or assistant shall receive such salary or compensation as the council shall by ordinance from time to time provide, payable in equal monthly installments.

The salary or compensation of all other employees of such city shall be fixed by the council, and shall be payable monthly, or at such shorter periods as the council shall determine.

History: En. Sec. 21, Ch. 57, L. 1911; re-en. Sec. 5386, R. C. M. 1921; amd. Sec. 1, Ch. 75, L. 1945; amd. Sec. 1, Ch. 189, L. 1949; amd. Sec. 1, Ch. 87, L. 1951.

Collateral References
Municipal Corporations⇐162 (1).
62 C.J.S. Municipal Corporations § 536.

11-3124. Repealed—Chapter 67, Laws of 1967.

Repeal

This section (Sec. 1, Ch. 9, L. 1943), relating to the official bonds of mayors and councilmen, was repealed by Sec. 11, Ch. 67, Laws 1967. For present law, see secs. 6-601 to 6-608.

11-3125. (5387) **Meetings of council—vice-president.** Regular meetings of the council shall be held on the first Monday after the election of councilmen, and thereafter at least once each month. The council shall provide by ordinance for the time for holding regular meetings, and special meetings may be called from time to time by the mayor or two councilmen. All meetings of the council, whether regular or special, at which any person not a city officer is admitted, shall be open to the public.

The mayor shall be president of the council and shall preside at its meetings, and shall supervise all departments of the city and report and recommend to the council for its action all matters requiring attention in any department. The council shall, at its first regular meeting, select one of its members for vice-president of the council, and in case of a vacancy in the office of mayor, or the absence or inability of the mayor, he shall perform the duties of the mayor.

History: En. Sec. 22, Ch. 57, L. 1911; re-en. Sec. 5387, R. C. M. 1921.

Collateral References

Municipal Corporations⇐83, 86.

62 C.J.S. Municipal Corporations §§ 389, 391 et seq.

11-3126. (5388) **Ordinances and franchises—how adopted or granted.** Every ordinance or resolution appropriating money, or ordering any street improvement or sewer, or making or authorizing the making of any contract, or granting any franchise or right to occupy or use the streets, highways, bridges, or public places in the city for any purpose, shall be complete in the form in which it is finally passed, and remain on file with the city clerk for public inspection at least one week before the final passage or adoption thereof. No franchise or right to occupy or use the streets, highways, bridges, or public places in any such city shall be granted, renewed, or extended, except by ordinance, and every franchise or grant for interurban or street railways, gas, or waterworks, electric light, or power plant, heating plant, telegraph or telephone systems, or other public service utilities, or renewal or extension of any such franchise or grant within such city, must be authorized or approved by a majority of the electors voting thereon at a general or special election, as provided in sections 11-1207, 11-1208 and 11-1209 of this code.

History: En. Sec. 23, Ch. 57, L. 1911; re-en. Sec. 5388, R. C. M. 1921.

Application to Commission City

The fact that a city has adopted the commission form of government does not render an ordinance or resolution, enacted as in this section directed, any the less indispensable as a part of the proceedings for the creation of an improvement district. Shapard v. City of Missoula, 49 M 269, 280, 141 P 544.

Collateral References

Municipal Corporations⇐106 (1), 279, 285.

62 C.J.S. Municipal Corporations §416 et seq.; 63 C.J.S. Municipal Corporations §§ 1066, 1082.

11-3127. (5389) **Officers not to be interested in contracts, receive passes, or do electioneering.** No officer or employee elected or appointed in any such city shall be interested, directly or indirectly, in any con-

tract or job for work or materials, or the profits thereof, or materials, supplies, or services to be furnished or performed for the city; and no such officer or employee shall be interested, directly or indirectly, in any contract or job for work or materials, or the profits thereof, or services to be furnished or performed for any person, firm, or corporation operating interurban railway, street railway, gasworks, waterworks, electric light or power plant, heating plant, telegraph line, telephone exchange, or other public utility within the territorial limits of said city. No such officer or employee shall accept or receive, directly or indirectly, from any person, firm, or corporation operating within the territorial limits of said city, any interurban railway, street railway, gasworks, waterworks, electric light or power plant, heating plant, telegraph line, or telephone exchange, or other business using or operating under a public franchise, any frank, free pass, free ticket, or free service, or accept or receive, directly or indirectly, from any such person, firm, or corporation, any other service upon terms more favorable than is granted to the public generally. Any violation of the provisions of this section shall be a misdemeanor, and every such contract and agreement shall be void.

Such prohibition of free transportation shall not apply to policemen or firemen in uniform; nor shall any free service to the city officials heretofore provided by any franchise or ordinance be affected by this section. Any officer or employee of such city who, by solicitation or otherwise, shall exert his influence, directly or indirectly, to influence other officers or employees of such city to adopt his political views, or to favor any particular person or candidate for office, or who shall in any manner contribute money, labor, or other valuable thing to any person for election purposes, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not exceeding three hundred dollars, or by imprisonment in the county jail not exceeding thirty days.

History: En. Sec. 24, Ch. 57, L. 1911; re-en. Sec. 5389, R. C. M. 1921.

Collateral References

Election⇐317; Municipal Corporations ⇐231 (1).

29 C.J.S. Elections §§ 329, 356; 63 C.J.S. Municipal Corporations § 988 et seq.

43 Am. Jur. 128, Public Officers, § 328.

Relation as creditor of contracting party as constituting interest within statute against public officer being interested in public contract. 73 ALR 1352.

Relationship as disqualifying interest within statute making it unlawful for an officer to be interested in a public contract. 74 ALR 792.

Relation to corporation as officer or stockholder as constituting interest within statute against public officer being interested in contract with public. 140 ALR 344.

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 ALR 2d 1137.

11-3128. (5390) **Civil service.** (1) Immediately after organizing, the council shall, by ordinance, appoint three civil service commissioners, who shall hold office, one until the first Monday in April in the second year, one until the first Monday in April of the fourth year, and one until the first Monday in April of the sixth year after his appointment. Each succeeding council shall, as soon as practicable after organizing, appoint one commissioner for six years, who shall take the place of a commissioner whose term of office expires. The chairman of the commission for each biennial period shall be the member whose term first expires. No person

while on the said commission shall hold or be a candidate for any office of public trust. Two of said members shall constitute a quorum to transact business. The commissioners must be citizens of Montana and residents of the city for more than three years next preceding their appointment.

(2) The council may remove any of said commissioners during their term of office for cause, a majority of councilmen voting in favor of such removal, and shall fill any vacancy that shall occur in said commission for the unexpired term. The city council shall provide suitable rooms in which the said civil service commission shall hold its meetings; it shall have a clerk, who shall keep a record of all its meetings, such city to supply the said commission with all necessary equipment to properly attend to such business.

(3) Before entering upon the duties of his office, each of said commissioners shall take and subscribe an oath, which shall be filed and kept in the office of the city clerk, to support the constitution of the United States and of the state of Montana, and to obey the laws, and to aid to secure and maintain an honest and efficient force, free from partisan distinction or control, and to perform the duties of his office to the best of his ability.

(4) Said commission shall, on the first Monday of April and October of each year, or oftener if it shall be deemed necessary, under such rules and regulations as may be prescribed by the council, hold examinations for the purpose of determining the qualifications of applicants for positions, which examination shall be practical, and shall fairly test the fitness of the persons examined to discharge the duties of the position to which they seek to be appointed. Such commission shall, as soon as possible after such examination, certify to the council double the number of persons necessary to fill vacancies, who, according to the records, have the highest standing for the position they seek to fill as a result of such examination, and all vacancies which occur that come under the civil service, prior to the date of the next regular examination, shall be filled from said list so certified; provided, however, that should the list for any cause be reduced to less than three for any division, then the council or the head of the proper department may temporarily fill a vacancy, but not to exceed thirty days.

(5) All persons subject to such civil service examination shall be subject to removal from office or employment by the council for misconduct or failure to perform their duties under such rules and regulations as it may adopt, and the chief of police, chief of the fire department, or any superintendent or foreman in charge of municipal work, may peremptorily suspend or discharge any subordinate then under his direction for neglect of duty or disobedience of his orders, but shall, within twenty-four hours thereafter, report such suspension or discharge, and the reason therefor, to the superintendent of his department, who shall thereupon affirm or revoke such discharge or suspension, according to the facts. Such employee (or the officer discharging or suspending him) may, within five days of such ruling, appeal therefrom to the council, which shall fully hear and determine the matter.

(6) The council shall have the power to enforce the attendance of witnesses, the production of books and papers, and power to administer oaths in the same manner and with like effect, and under the same penalties, as in the case of magistrates exercising criminal or civil jurisdiction under the statutes of Montana.

(7) Said commissioners shall make an annual report to the council, and it may require a special report from said commissioners at any time; and said council may prescribe such rules and regulations for the proper conduct of the business of the said commission as shall be found expedient and advisable, including restrictions on appointment, promotions, removals for cause, roster of employees, certificates of records to the auditors, and restrictions on payment to persons improperly employed.

(8) The council of such city shall have power to pass ordinances imposing suitable penalties for the punishment of persons violating any of the provisions of this act relating to the civil service commission.

(9) The provisions of this section shall apply to all appointive officers and employees of such city, except those especially named in section 11-3121 of this code, commissioners of any kind, laborers whose occupation requires no special skill or fitness, election officials, and mayor's secretary and assistant attorney, where such officers are appointed.

(10) All officers and employees in any said city shall be elected or appointed with reference to their qualifications and fitness, and for the good of the public service, and without reference to their political faith or party affiliations.

(11) It shall be unlawful for any candidate for office in any such city, directly or indirectly, to give or promise any person or persons any office, position, employment, benefit, or anything of value for the purpose of influencing or obtaining the political support, aid, or vote of any person or persons.

(12) Every elective officer in any such city shall, within thirty days after qualifying, file with the city clerk, and publish at least once in the daily newspaper of general circulation, or weekly, if there be no daily newspaper published, his sworn statement of all his election and campaign expenses, and by whom such funds were contributed.

Any violation of the provisions of this section shall be a misdemeanor, and give ground for the removal from office.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R. C. M. 1921.

Removal of Chief of Fire Department

The chief of a fire department of a city operating under the commission form of government was removed by the council, his name, however, being restored to the roll of members, thus entitling him to the safeguards afforded him as such member under the civil service rules of the Firemen's Act. He later was suspended under this section, but a hearing on his appeal was not accorded him. Held, that failure to hear his appeal rendered the order of suspension of no effect, automatically reinstated him, and entitled him to compensation during the period of his suspension. State ex rel. Daly v. Dryburgh, 62 M 36, 45, 203 P 508.

Removal of Police Officer

A police officer may be suspended or discharged for neglect of duty or disobedience of orders by the chief of police under this section, subject to review by the superintendent of the police department, from whose order of approval the accused may appeal to the city council; or by the council under sections 11-1805 and 11-1806, upon charges filed with it, a copy of which must be furnished to him, after a trial had

on at least two days' notice. State ex rel. Lease v. Wilkinson, 59 M 327, 333, 196 P 878.

Where an acting chief of police merely recommended to the council that a police officer be removed from office, but did not actually suspend or discharge him, in conformity with this section, there was no order from which he could appeal, and his attempted appeal was ineffectual for any purpose. State ex rel. Lease v. Wilkinson, 59 M 327, 333, 196 P 878.

Collateral References

Municipal Corporations⇨131 et seq., 133, 158.

62 C.J.S. Municipal Corporations §§ 468, 469, 505, 518.

15 Am. Jur. 2d 470, Civil Service, § 7.

Acquiescence or delay as affecting rights of public employees illegally discharged, suspended, or transferred. 145 ALR 767.

11-3129. (5391) **Publication of report by council—examination of accounts.** The council shall each month print in pamphlet form a detailed itemized statement of all of the receipts and expenses of the city and a summary of its proceedings during the preceding month, and furnish printed copies thereof to the state library, the city library, the daily newspaper of the city, and persons who shall apply therefor at the office of the city clerk. The state examiner shall have the power and it shall be his duty to make at least one examination each year of the books and accounts of any city operating under the commission form of government, and to prescribe the necessary records and systems of accounting as provided in sections 82-1002 to 82-1010, inclusive, and the actions of the city commissioners and all other officers thereof shall be subject to the provisions of said sections, and such city shall pay the fee provided for in section 5-905.

History: En. Sec. 26, Ch. 57, L. 1911; re-en. Sec. 5391, R. C. M. 1921; amd. Sec. 1, Ch. 52, L. 1943.

Collateral References

Municipal Corporations⇨885.

64 C.J.S. Municipal Corporations § 1885.

11-3130. (5392) **Revision of appropriations made by former council.** If, at the beginning of the term of office of the first council elected in such city under the provisions of this act, the appropriations for the expenditures of the city government for the current fiscal year have been made, said council shall have power, by ordinance, to revise, repeal, or change said appropriations, and to make additional appropriations.

History: En. Sec. 27, Ch. 57, L. 1911; re-en. Sec. 5392, R. C. M. 1921.

Collateral References

Municipal Corporations⇨890.

64 C.J.S. Municipal Corporations § 1885 et seq.

11-3131. (5393) **Rules for construction of law—definition of terms.** In the construction of this act the following rules shall be observed, unless such construction would be inconsistent with the manifest intent, or repugnant to the context of the statute;

1. The words "councilman" or "alderman" shall be construed to mean "councilman" when applied to cities under this act;

2. When an office or officer is named in any law referred to in this act, it shall, when applied to cities under this act, be construed to mean the office or officer having the same function or duties under the provisions of this act, or under ordinances passed under authority thereof;

3. The words "franchise" or "right" shall include every special privilege in the streets, highways, and public places of the city, whether

granted by the state or the city, which does not belong to citizens generally by common right;

4. The word "electors" shall be construed to mean persons qualified to vote for elective offices at regular municipal elections.

History: En. Sec. 28, Ch. 57, L. 1911; re-en. Sec. 5393, R. C. M. 1921.

Collateral References
Municipal Corporations⇐124 (1).
62 C.J.S. Municipal Corporations § 465.

11-3132. (5394) **Recall of elective officers.** (1) The holder of any elective office may be removed at any time by the electors qualified to vote for a successor of such incumbent. The procedure to effect the removal of an incumbent of an elective office shall be as follows: A petition signed by twenty-five per cent of all qualified electors registered for the last preceding general municipal election, demanding an election of a successor of the person sought to be removed, shall be filed with the city clerk, which petition shall contain a general statement of the grounds for which the removal is sought. The signatures to the petition need not be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number. One of the signers of such paper shall make oath before an officer competent to administer oaths that the statements therein are true as he believes, and that each signature to the paper appended is the genuine signature of the person whose name it purports to be.

(2) Within ten days from the date of filing such petition the city clerk shall examine, and from the voters' register ascertain whether or not said petition is signed by the requisite number of qualified electors, and, if necessary, the council shall allow him extra help for that purpose; and he shall attach to said petition his certificate, showing the result of said examination. If, by the clerk's certificate, the petition is shown to be insufficient, it may be amended within ten days from the date of said certificate. The clerk shall, within ten days after such amendment, make like examination of the amended petition, and if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same; without prejudice, however, to the filing of a new petition to the same effect. If the petition shall be deemed to be sufficient, the clerk shall submit the same to the council without delay. If the petition shall be found to be sufficient, the council shall order and fix a date for holding said election, not less than seventy days nor more than eighty days from the date of the clerk's certificate to the council that a sufficient petition is filed.

(3) The council shall make, or cause to be made, publication of notice and all arrangements for holding such election, and the same shall be conducted, returned, and the result thereof declared, in all respects as are other elections.

(4) As far as applicable, except as otherwise herein provided, nominations hereunder shall be made without the intervention of a primary election by filing with the clerk, at least ten days prior to said special election, a statement of candidacy accompanied by a petition signed by electors entitled to a vote at said special election, equal in number to at

least ten per cent of the entire number of persons registered to vote at the last preceding general municipal election, which said statement of candidacy and petition shall be substantially in the form set out in section 11-3112 of this code, so far as the same is applicable, substituting the word "special" for the word "primary" in such statement and petition, and stating therein that such person is a candidate for election instead of nomination.

(5) The ballot for such special election shall be in substantially the following form:

Official Ballot.

Special election for the balance of the unexpired term of .....
as ..... for .....

(Vote for one only.)
(Name of candidates.)
Name of present incumbent.
Official ballot attest.
(Signature) .....
City Clerk.

(6) The successor of any officer so removed shall hold office during the unexpired term of his predecessor. Any person sought to be removed may be a candidate to succeed himself, and unless he requests otherwise in writing, the clerk shall place his name on the official ballot without nomination. In any such removal election, the candidate receiving the highest number of votes shall be declared elected. At such election, if some other person than the incumbent receives the highest number of votes, the incumbent shall thereupon be deemed removed from the office upon the qualification of his successor. In case the party who receives the highest number of votes should fail to qualify within ten days after receiving notification of the election, the office shall be deemed vacant. If the incumbent receive the highest number of votes, he shall continue in office. The said method of removal shall be cumulative, and additional to the methods heretofore provided by law.

History: En. Sec. 29, Ch. 57, L. 1911; amd. Sec. 3, Ch. 2, L. 1915; re-en. Sec. 5394, R. C. M. 1921.

Collateral References
Municipal Corporations⇐159 (1).
62 C.J.S. Municipal Corporations § 510.
37 Am. Jur. 874, Municipal Corporations, § 247 et seq.

11-3133. (5395) **Ordinance—how submitted—petition and election.** Any proposed ordinance may be submitted to the council by petition signed by electors of the city equal in number to the percentage hereinafter required. The signature, verification, inspection, certification, amendment, and submission of such petition shall be the same as provided for petition under the preceding section. If the petition accompanying the proposed ordinance be signed by electors equal in number to twenty-five per centum of the entire number of persons registered to vote at the last preceding general election, and contains a request that the said ordinance be submitted to a vote of the people, if not passed by the council, such council shall either:

(a) Pass each ordinance without alteration within twenty days after the attachment of the clerk's certificate to the accompanying petition; or,

(b) Forthwith, after the clerk shall attach to the petition accompanying such ordinance his certificate of sufficiency, the council shall call a special election, unless a general municipal election is fixed by law within thirty days thereafter, and at such special or general municipal election, if one is so fixed, such ordinance shall be submitted to the vote of the electors of such city.

But if the petition is signed by not less than ten nor more than twenty-five per centum of the electors, as above defined, then the council shall, within twenty days, pass said ordinance without change, or submit the same at the next general city election occurring after the clerk's certificate of sufficiency is attached to said petition.

The ballots used when voting upon said ordinance shall contain these words: "For the ordinance" (stating the nature of the proposed ordinance), and "Against the ordinance" (stating the nature of the proposed ordinance). If a majority of the qualified electors voting on the proposed ordinance shall vote in favor thereof, such ordinance shall thereupon become a valid and binding ordinance of the city; and any ordinance proposed by the petition of which shall be adopted by a vote of the people cannot be repealed or amended except by a vote of the people.

Any number of proposed ordinances may be voted upon at the same election, in accordance with the provisions of this section; but there shall not be more than one special election in any period of six months for such purposes.

The council may submit a proposition for the repeal of any such ordinance, or for amendments thereto, to be voted upon at any succeeding general city election; and should such proposition so submitted receive a majority of the votes cast thereon at such election, such ordinance shall thereby be repealed or amended accordingly. Whenever any ordinance or proposition is required by this act to be submitted to the voters of the city at any election, the city clerk shall cause such ordinance or proposition to be published once in each of the daily newspapers published in such city, and if there be none, then one time in each weekly newspaper published therein; such publication to be not more than twenty nor less than five days before the submission of such proposition or ordinance to be voted on.

History: En. Sec. 30, Ch. 57, L. 1911; re-en. Sec. 5395, R. C. M. 1921.

Collateral References

Municipal Corporations⇐108.

62 C.J.S. Municipal Corporations § 449 et seq.

11-3134. (5396) **Taking effect and suspension of ordinances.** No ordinance passed by the council, except when otherwise required by the general laws of this state or the provisions of this act, except an ordinance for the immediate preservation of the public peace, health, or safety, which contains a statement of its urgency, and is passed by a two-thirds vote of the council, shall go into effect before ten days from the time of its final passage; and if, during said ten days, a petition signed by electors of the city equal in number to at least twenty-five per centum of the entire number of persons registered to vote at the last preceding general munici-

pal election, protesting against the passage of such ordinance, be presented to the council, the same shall thereupon be suspended from going into operation, and it shall be the duty of the council to reconsider such ordinance; and if the same is not entirely repealed, the council shall submit the ordinance, as is provided by subdivision (b) of the preceding section, to the vote of the electors of the city, either at a general election or at a special municipal election to be called for that purpose; and such ordinance shall not go into effect or become operative unless a majority of the qualified electors voting on the same shall vote in favor thereof. Said petition shall be in all respects in accordance with the provisions of the preceding section, except as to the percentage of signers, and be examined and certified to by the clerk in all respects as therein provided.

History: En. Sec. 31, Ch. 57, L. 1911; re-en. Sec. 5396, R. C. M. 1921.

11-3135. (5397) **Abandonment of commission form.** Any city which shall have operated for more than one year under the provisions of this act may abandon such organization hereunder and accept the provisions of the general law of the state then applicable to cities of its population.

Upon the petition of not less than ten per cent (10%) of the electors of such city registered for the last preceding general election, the following proposition shall be placed upon the ballot at the next regular city election, provided the petition be filed at least sixty (60) days prior to the date of such election:

"Shall the city of (name of city) abandon its organization under chapter 57 of the acts of the twelfth legislative assembly and become a city under the general law governing cities of like population; or if formerly organized under special charter shall resume said special charter?"

If the majority of the votes cast at such election be in favor of such proposition, the officers elected at the next succeeding biennial election shall be those then prescribed by the general law of the state for cities of like population, and upon the qualification of such officers such city shall become a city under such general law of the state, but such change shall not in any manner or degree affect the property, rights, or liabilities of any nature of such city, but shall merely extend to each change in its form of government.

The sufficiency of such petition shall be determined, the election ordered and conducted, and the results declared, generally as provided for by section 11-3132 of this code, in so far as the provisions thereof are applicable; or if now organized under special charter, may resume said special charter. Whenever the form of government of any city is determined by a vote of the people under the provision of this section, the same question shall not be submitted again for a period of two (2) years, and any ordinance adopted by a vote of the people shall not be repealed or the same question submitted for a period of two (2) years.

History: En. Sec. 32, Ch. 57, L. 1911; 5397, R. C. M. 1921; amd. Sec. 1, Ch. 105, amd. Sec. 1, Ch. 128, L. 1913; re-en. Sec. L. 1951.

11-3136. (5398) **Requirements of petitions.** Petitions provided for in this act shall be signed by none but legal voters of the city. Each petition

shall contain, in addition to the names of the petitioners, the street and house number in which the petitioner resides, his length of residence in the city. It shall also be accompanied by the affidavit of one or more legal voters of the city, stating that the signers thereof were, at the time of signing, legal voters of said city, and the number of signers at the time the affidavit was made.

History: En. Sec. 33, Ch. 57, L. 1911; re-en. Sec. 5398, R. C. M. 1921; amd. Sec. 2, Ch. 105, L. 1951.

Collateral References
Municipal Corporations⇐48 (1).
62 C.J.S. Municipal Corporations § 88.

11-3137. (5399) **Effect of act upon existing laws.** All acts and parts of acts, and all laws, not inconsistent with any of the provisions of this act, now in force or hereafter enacted relative to municipal corporations, are hereby continued in full force and effect, and shall be considered and construed as not repealed by this act, except in so far as the same may be in conflict or inconsistent with the provisions of this act.

History: En. Sec. 34, Ch. 57, L. 1911; re-en. Sec. 5399, R. C. M. 1921.

CHAPTER 32

COMMISSION-MANAGER FORM OF GOVERNMENT

Section 11-3201. Any city may reorganize under commission-manager form.
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11-3201. (5400) **Any city may reorganize under commission-manager form.** Any municipality may abandon its organization and reorganize under the provisions of this act, by proceeding as hereinafter provided.

History: En. Sec. 1, Ch. 152, L. 1917; re-en. Sec. 5400, R. C. M. 1921.

NOTE.—The Municipal Budget Law (11-1401 to 11-1413) does not apply to cities operating under the commission-manager form of government. Attorney General's Opinions, Vol. 15, No. 364.

Collateral References

Municipal Corporations⇐48 (1).

62 C.J.S. Municipal Corporations § 90.

37 Am. Jur. 685, Municipal Corporations, § 72 et seq.

Commission and other modern forms of municipal government as affecting liability of municipality for torts. 30 ALR 473.

Constitutionality of city manager or commission form of municipal government. 67 ALR 737.

11-3202. (5401) **Submission of question to electors—petition and order of election.** Upon a petition being filed with the city or town council, signed by not less than twenty-five per cent of the qualified electors of such municipality registered for the last preceding general municipal election, praying that the question of reorganization under this act be submitted to the qualified electors of such municipality, said city or town council shall thereupon, and within thirty days thereafter, order a special election to be held, at which election the question of reorganization of such municipality under the provisions of this act shall be submitted to the qualified electors of such municipality.

Such order of the city or town council shall specify therein the time when such election shall be held, which must be within ninety days from the date of filing of such petition.

History: En. Sec. 2, Ch. 152, L. 1917; re-en. Sec. 5401, R. C. M. 1921.

11-3203. (5402) **Proclamation of election.** Upon the city or town council ordering such special election to be held, the mayor of such municipality shall issue a proclamation setting forth the purpose for which such special election is held, and the date of holding such special election, which proclamation shall be published for ten consecutive days in each daily newspaper published in said municipality, if there be such, otherwise once a week for two consecutive weeks in each weekly newspaper published therein, and such proclamation shall also be posted in at least five public places within such municipality.

History: En. Sec. 3, Ch. 152, L. 1917; re-en. Sec. 5402, R. C. M. 1921.

11-3204. (5403) **Ballots—form.** At such election, the ballots to be used shall be printed on plain white paper, and shall be headed "Special election for the purpose of submitting to the qualified electors of (city, town) of (name of city or town) under chapter (name of chapter containing this act) of the acts of the fifteenth legislative assembly," and shall be substantially in the following form:

For reorganization of the (city, town) of (name of city or town) under chapter (name of chapter containing this act) of the acts of the fifteenth legislative assembly.

Against reorganization of the (city, town) of (name of city or town) under chapter (name of chapter containing this act) of the acts of the fifteenth legislative assembly.

Such election shall be conducted, and vote canvassed and result declared in the same manner as provided by law in respect to other municipal elections.

History: En. Sec. 4, Ch. 152, L. 1917; re-en. Sec. 5403, R. C. M. 1921.

11-3205. (5404) **Certificate of result of election—election not to be held within two years after failure to adopt.** If such proposition is adopted, the mayor shall transmit to the governor, to the secretary of state and to the county clerk and recorder, each a certificate stating that such proposition was adopted. If such proposition shall not be adopted at such special election, such proposition shall not again be submitted to the electors of such municipality within a period of two years from the date of the last submission.

History: En. Sec. 5, Ch. 152, L. 1917; re-en. Sec. 5404, R. C. M. 1921; amd. Sec. 1, Ch. 31, L. 1923.

11-3206. (5405) **Special election for electing commissioners.** If the majority of the votes cast at such election shall be in favor of such proposition, the city or town council must hold a meeting within one week thereafter and at such meeting order a special election to be held for the purpose of electing the number of commissioners to which such municipality shall be entitled, which order shall specify the time of holding such election, which must be within ninety days after the making of such order, and the mayor shall thereupon issue a proclamation setting forth the purpose for which such special election is held and the day of holding the same, which proclamation shall be published for ten successive days in each daily newspaper published in such municipality if there be such, otherwise for two successive weeks in each weekly newspaper published therein, and a copy thereof shall also be posted at each voting place within said municipality and also in five of the most public places in said municipality.

History: En. Sec. 6, Ch. 152, L. 1917; re-en. Sec. 5405, R. C. M. 1921; amd. Sec. 2, Ch. 31, L. 1923.

Collateral References

Municipal Corporations⇦129.

62 C.J.S. Municipal Corporations § 468 et seq.

11-3207. (5406) **Manner of conducting election—canvassing votes.** Such election shall be conducted, the vote canvassed, and the result declared in the same manner as provided by law in respect to other municipal elections.

History: En. Sec. 7, Ch. 152, L. 1917; re-en. Sec. 5406, R. C. M. 1921.

11-3208. (5407) **Laws governing city—ordinances—territorial limits and property.** All laws governing municipalities of like population, and not inconsistent with the provisions of this act, shall apply to and govern municipalities organized under this act. All bylaws, ordinances, and resolutions lawfully passed and in force in any such municipality under its organization, not in conflict herewith, shall remain in force until altered or repealed by the commission under the provisions of this act. The territorial limits of such municipality shall remain the same as under the former organization, and all rights and property of every description which were vested in any such municipality under its former organization shall vest in the same under the organization herein contemplated, and no right or liability either in favor of or against it, existing at the time, and no suit or prosecution of any kind, shall be affected by such change, unless otherwise provided for in this act.

History: En. Sec. 8, Ch. 152, L. 1917; re-en. Sec. 5407, R. C. M. 1921.

References

City of Bozeman v. Merrell, 81 M 19, 26, 261 P 876.

11-3209. (5408) **Organization of communities or groups of communities as municipality — election proclamation — election of commissioners.** Whenever the inhabitants of any community or group of communities in any county, whether separately incorporated in whole or in part, or unincorporated, which are situated in such proximity or location with reference to each other as to make single municipal control necessary or desirable, shall desire to be organized into or annexed to an incorporated city or town under the provisions of this act, the board of county commissioners of such county may, or upon the presentation of a petition signed by not less than twenty-five per cent of the qualified electors in such community or group of communities must, issue a proclamation ordering a special election to be held, at which election the question of the organization of such community or group of communities as a municipality under the provisions of this act shall be submitted to the qualified electors within the proposed municipal district. Said proclamation shall specify the time when and the places where such election shall be held, which must be within ninety days from the date of filing such petition, and shall define the boundaries of said proposed municipal district, which shall include all such communities and cities, and such additional adjacent territory as shall, in the judgment of the board of county commissioners, provide for future urban growth.

If a majority of the legal voters at said election vote in favor of the organization of such municipal district, or in favor of annexation to an incorporated city or town, then the board of county commissioners shall declare the result of said elections, and immediately thereafter shall give

notice for thirty days in a newspaper published within the proposed municipal district, or if none be published therein, by posting notices in six public places within the limits of said district of the time and place or places of holding the first election for commissioners of such municipal district under this law. At such election all electors qualified by the general election laws of the state who have resided within the limits of the municipal district for six months are qualified electors. The board of county commissioners must appoint judges and clerks of election, and canvass and declare the result thereof. The election must be conducted in the manner prescribed by law for the election of county officers, and the commissioners so elected must qualify in the manner prescribed by law for county officers.

History: En. Sec. 9, Ch. 152, L. 1917; amd. Sec. 1, Ch. 44, L. 1919; re-en. Sec. 5408, R. C. M. 1921.

Collateral References

Municipal Corporations⇐12 (2), (8).

62 C.J.S. Municipal Corporations § 15 et seq.

11-3210. (5409) **Powers of municipalities under commission-manager plan.** The inhabitants of any municipality, coming under the provisions of this act, as its limits now are, or may hereafter be, shall be a body politic and corporate and have a corporate name, and as such shall have perpetual succession, and may use a corporate seal. Through its duly elected officers, it may sue and be sued; may acquire property in fee simple or lesser interest, or estate by purchase, gift, devise, appropriation, lease, or lease with the privilege to purchase for any municipal purpose; may sell, lease, hold, manage, and control such property, and make any and all rules and regulations by ordinance or resolution which may be required to carry out fully all provisions of any conveyance, deed, or will, in relation to any gift or bequest, or the provisions of any lease by which it may acquire property; may acquire, construct, own, lease, and operate and regulate public utilities; may assess, levy, and collect taxes for general and special purposes on all the subjects or objects which the municipality may lawfully tax; may borrow money on the faith and credit of the municipality by the issue or sale of bonds or notes of the municipality; may appropriate money of the municipality for all lawful purposes; may create, provide for, construct, regulate and maintain all things of nature of public works and improvements; may levy and collect assessments for improvement districts and other local improvements; may license and regulate persons, corporations, and associations engaged in any business, occupation, profession, or trade; may define, prohibit, abate, suppress, and prevent all things detrimental to the health, morals, comfort, safety, convenience, and welfare of the inhabitants of the municipality, and all nuisances and the causes thereof; may regulate the construction, height, and the material used in all buildings, and the maintenance and occupancy thereof; may regulate and control the use, for whatever purpose, of the streets and other public places; may create, establish, abolish, and organize offices, and fix the salaries and compensations of all officers and employees; may make and enforce local sanitary and police and other regulations; and may pass such ordinances as may be expedient for maintaining and promoting peace, good government, and welfare of the mu-

nicipality, and for the performance of the functions thereof. The municipality shall have all powers that now are or hereafter may be granted to municipalities by the constitution or laws of Montana; and all such powers, whether expressed or implied, shall be exercised and enforced in the manner prescribed by this act, or when not prescribed therein, in such manner as shall be prescribed by the ordinances or resolutions of the commission.

History: En. Sec. 10, Ch. 152, L. 1917; re-en. Sec. 5409, R. C. M. 1921.

Punishment of Ordinance Violations

The powers of a city operating under the commission-manager plan granted by this section, with respect to punishments of violations of its ordinances, are the same as and no greater than those granted by section 11-901 et seq., to cities generally. City of Bozeman v. Merrell, 81 M 19, 26, 261 P 876.

References

City of Bozeman v. Nelson, 73 M 147, 155, 237 P 528; City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 211.

Collateral References

Municipal Corporations⇐57.

62 C.J.S. Municipal Corporations § 106 et seq.

11-3211. (5410) **Form of government to be known as commission-manager plan—composition of commission—powers.** The form of government provided for in this chapter shall be known as the "commission-manager plan," and shall consist of a commission of citizens, who shall be elected at large in the manner hereinafter provided. The commission shall consist of three (3) commissioners for all municipalities having a population of less than fifteen thousand (15,000) and five (5) commissioners for all cities having a population of fifteen thousand (15,000) or more. The commission shall constitute the governing body, with powers as hereinafter provided, to pass ordinances, adopt regulations and appoint a chief administrative officer to be known as the "city manager," and exercise all powers as hereinafter provided.

History: En. Sec. 12, Ch. 152, L. 1917; re-en. Sec. 5410, R. C. M. 1921; amd. Sec. 1, Ch. 60, L. 1943.

Collateral References

Municipal Corporations⇐60, 80.

62 C.J.S. Municipal Corporations §§ 106, 385 et seq.

11-3212. (5411) **Qualification of commissioners—tenure of office—expiration of terms.** The commissioners elected at the first election shall qualify and their terms of office shall begin on the first Monday after their election, and the terms of office of the mayor and councilmen or aldermen in such city or town in office at the beginning of the term of office of the commissioners first elected under the provisions of this act shall cease and terminate, and the terms of office of all their appointed officers, and of all of the employees of such city or town, shall cease and terminate as soon as the commissioners shall by resolution declare.

All commissioners shall serve for a term of four years and until their successors are elected and have qualified; except that at the first election the two candidates having the highest number of votes shall hold office for a period of four years, less the time elapsed since the 31st day of December of the odd-numbered year last preceding. The terms of office of all other candidates shall expire on the 31st day of December in any odd-

numbered year following the special election provided for in this act, at which the first commissioners are elected.

History: En. Sec. 13, Ch. 152, L. 1917; re-en. Sec. 5411, R. C. M. 1921; amd. Sec. 3, Ch. 31, L. 1923.

Collateral References

Municipal Corporations⇐149 (2).

62 C.J.S. Municipal Corporations § 496.

37 Am. Jur. 688, Municipal Corporations, § 75.

11-3213. (5412) **Filling of vacancies in commission.** Vacancies in the commission shall be filled by the commission for the remainder of the unexpired term, but any vacancy resulting from a recall shall be filled in the manner provided in such case.

History: En. Sec. 14, Ch. 152, L. 1917; re-en. Sec. 5412, R. C. M. 1921.

11-3214. (5413) **Qualifications of commissioners—holding other public office forbidden—interest in contracts not allowed—accepting gratuities forbidden.** Members of the commission shall be residents of the city or town and have the qualifications of electors, and own real estate situated therein to the assessed value of not less than one thousand dollars. Commissioners and other officers and employees shall not hold any other public office or employment, except in the state militia, as school trustees, or notary publics, and shall not be interested in the profits or emoluments of any contract, job, work, or service for the municipality. Any commissioner who shall cease to possess any of the qualifications herein required, shall forthwith forfeit his office, and any such contract in which any member is or may be interested, may be declared void by the commission.

No commissioner or other officer or employee of said city or town shall accept any frank, free ticket, pass or service directly or indirectly, from any person, firm or corporation upon terms more favorable than are granted to the public generally. Any violation of the provisions of this section shall be a misdemeanor and shall also be sufficient cause for the summary removal or discharge of the offender. Such provisions for free service shall not apply to policemen or firemen in uniform or wearing their official badges, where the same is provided by ordinance, nor to any commissioner, nor to the city manager, nor to the city attorney, upon official business, nor to any other employee or official of said city on official business who exhibits written authority signed by the city manager.

History: En. Sec. 15, Ch. 152, L. 1917; re-en. Sec. 5413, R. C. M. 1921; amd. Sec. 4, Ch. 31, L. 1923.

Collateral References

Municipal Corporations⇐138-142, 231 (1).

62 C.J.S. Municipal Corporations §§ 476 et seq., 489; 63 C.J.S. Municipal Corporations § 988 et seq.

43 Am. Jur. 128, Public Officers, § 328.

Relation as creditor of contracting party as constituting interest within statute against public officer being interested in public contract. 73 ALR 1352.

Relationship as disqualifying interest within statute making it unlawful for an officer to be interested in a public contract. 74 ALR 792.

11-3215. (5414) **Nomination of candidates—primary election.** (1) Candidates to be voted for at all general municipal elections at which com-

missioners are to be elected under the provisions of this act shall be nominated by a primary election, and no other names shall be placed upon the general ballot except those nominated in the manner hereinafter prescribed. The primary election for such nominations shall be held on the last Tuesday of August of the odd-numbered years.

(2) Any qualified elector of the municipality, who is the owner of real estate situated therein to the value of not less than one thousand dollars, desiring to become a candidate for commissioner, shall, at least ten days prior to said primary election, file with the clerk of the commission a statement of such candidacy in substantially the following form:

State of Montana,
County of ..... } ss.

I, ..., being first duly sworn, say that I reside at ..... street, (city or town) of ....., county of ....., state of Montana; that I am a qualified voter therein; that I am a candidate for nomination to the office of commissioner to be voted upon at the primary election to be held on the last Tuesday of August, 19....., and I hereby request that my name be printed upon the official primary ballot for nomination by such primary election for such office.

(Signed).....

Subscribed and sworn to (or affirmed) before me by ....on this.....day of....., 19.....

(Signed).....

And shall at the same time file therewith the petition of at least twenty-five qualified voters requesting such candidacy. Each petition shall be verified by one or more persons as to qualifications and residence, with street number, of each of the persons so signing the said petition, and the said petition shall be in substantially the following form:

(3) Petition Accompanying Nominating Statement.

The undersigned duly qualified electors of the (city, town) of..... ....., and residing at the places set opposite our respective names hereto, do hereby request that the name of (name of candidate) be placed on the ballot as a candidate for nomination to the office of commissioner at the primary election to be held on the last Tuesday of August, 19..... We further state that we know him to be a qualified elector of said (city, town), and a man of good moral character, and qualified, in our judgment, for the duties of such office, and we individually certify that we have not signed similar petitions greater in number than the number of commissioners to be chosen at the next general municipal election.

Names of Qualifying Electors Number Street

(Space for Signatures.)

State of Montana,
County of ..... } ss.

....., being duly sworn, deposes and says, that he knows the qualifications and residence of each of the per-

sons signing the appended petition, and that such signatures are genuine, and the signatures of the persons whose names they purport to be.

(Signed).....

Subscribed and sworn to before me this ..... day of ....., 19.....

.....,

Notary Public

This petition, if found insufficient, shall be returned to ....at No. ..... street, ..., Montana.

(4) Immediately upon the expiration of the time of filing the statements and petition for candidates, the clerk of the commission shall cause to be published for three consecutive days in all the daily newspapers published in the municipality in proper form, the names of the persons that are to appear upon the primary ballots, and if there be no daily newspaper, then in two issues of any other newspaper that may be published in said municipality, and the said clerk shall thereupon cause the primary ballots to be printed and authenticated with a facsimile of his signature.

(5) In the event the number of legally qualified candidates for the office of commissioner at such primary election does not exceed twice the number of vacancies in the commission to be filled, no municipal primary election for the nomination of candidates for the office of commissioner shall be held in said city for said year and such legally qualified candidates shall be deemed duly nominated and shall be placed on the general ballot.

History: En. Sec. 16, Ch. 152, L. 1917; re-en. Sec. 5414, R. C. M. 1921; amd. Sec. 1, Ch. 36, L. 1961.

Collateral References

Elections⇐126 (1), (2); Municipal Corporations⇐129.

29 C.J.S. Elections §§ 91, 111-113, 117, 131; 62 C.J.S. Municipal Corporations § 468 et seq.

11-3216. (5415) **Ballots—form, contents and distribution—qualification of electors—conduct of election.** (1) All ballots used in all elections held under authority of this act shall be without party mark or designation. The ballots shall be printed on plain, substantial white paper.

(2) Except that the crosses here shown shall be omitted, and that in place of the names of persons here shown, there shall appear the names of the persons who are candidates for nomination, the primary ballots shall be substantially as hereinafter designated. Primary, regular and special election ballots provided under authority of this act for the nomination or election of commissioners shall not bear the name of any person or persons or any issue other than those of candidates for the nomination or election to the office of commissioner.

Official Primary Ballot.

Vote for (insert here a number equal to the number of persons to be elected to the office of commissioner at the next regular municipal election).

If you wrongly mark, tear or deface this ballot, return it and obtain another.

Candidates for nomination to the office of commissioner at the primary election.

☒ John Doe
☒ Henry Smith
☒ George Jones
☒ James Richards
☒ Richard Doe

Official Ballot Attest:

(Signature) .....

Clerk of the Commission.

(3) Having caused said ballots to be printed, the clerk of the commission shall cause to be delivered at each polling place a number of said ballots, ten per cent in excess of the number of such voters registered in such polling place at the last general municipal election. The persons who are qualified to vote at the general election, shall be qualified to vote at such primary election, and any person offering to vote, may be orally challenged by any elector of the municipality upon any or all grounds set forth and specified in section 23-1220, and the provisions of sections 23-1221 to 23-1228, inclusive, shall apply at all challenges made at such election. Judges of election shall immediately upon the closing of the polls, count the ballots and ascertain the number of such votes cast in such precinct for each of the candidates, and make return thereof to the clerk of the commission upon proper blanks to be furnished by the clerk of the commission within twelve hours of the closing of the polls. Not later than the first legal day after he shall have received such returns, the clerk of the commission shall canvass said returns so received from all the polling precincts and shall make and publish in all the newspapers in said municipality, at least once, the result thereof. Said canvass by the clerk of the commission shall be made publicly.

(4) The candidates for nomination to the office of commissioner who shall have received the greatest vote in such primary election shall be placed on the ballot at the next regular municipal election, in number not to exceed double the number of vacancies in the commission to be filled.

(5) Except as otherwise in this act provided all electors of municipalities under this act, who, by ordinances governing cities and towns incorporated under the general municipal incorporation law, or by charter, would be entitled to vote for the election of officers at any general municipal election in such cities or towns, shall be qualified to vote at all elections under this act; and the ballots to be used at such general municipal elections, shall be in the same general form as for such primary election so far as applicable, and in all elections in such municipalities, the election precincts, voting places, method of conducting the elections, canvassing of votes and announcing the results, shall be the same as by law provided for the election of officers in such cities or towns so far as the same are applicable and not inconsistent with the provisions of this act.

History: En. Sec. 17, Ch. 152, L. 1917; re-en. Sec. 5415, R. C. M. 1921; amd. Sec. 5, Ch. 31, L. 1923.

Collateral References
Elections⇨126 (4), (5), 166 et seq.
29 C.J.S. Elections §§ 114, 115, 118, 130-134, 156, 157, 163-166 et seq.

11-3217. (5416) **Arrangement of names of candidates on ballot.** The names of candidates on all ballots used in any election held under the authority of this act shall be printed in rotation, as follows:

The ballot shall be printed in as many series as there are candidates for the office of commissioner. The whole number of ballots to be printed shall be divided by the number of series, and the quotient so obtained shall be the number of ballots in each series. In printing the first series of ballots, the names of candidates shall be arranged in alphabetical order. After printing the first series, the first name shall be placed last and the next series printed, and the process shall be repeated until each name in the list shall have been printed first an equal number of times. The ballots so printed shall then be combined in tablets, so as to have the fewest possible ballots having the same order of names printed thereon together in the same tablet.

History: En. Sec. 18, Ch. 152, L. 1917; re-en. Sec. 5416, R. C. M. 1921.

Collateral References
Elections⇨126 (5).
29 C.J.S. Elections § 118.

11-3218. (5417) **Date of holding regular elections—special elections.** A regular election for the choice of commissioners, provided for in this act, shall be held on the first Tuesday after the first Monday in November of any odd-numbered year, and on the first Tuesday after the first Monday in November in each second year thereafter. Elections so held shall be known as regular municipal elections. All other elections held under the provisions of this act, excepting those for the nomination of candidates for the office of commissioner, shall be known as special municipal elections.

History: En. Sec. 19, Ch. 152, L. 1917; re-en. Sec. 5417, R. C. M. 1921.

Collateral References
Elections⇨38.
29 C.J.S. Elections § 77.

11-3218.1. Dispensing of general election. Whenever, in any city operating under a commission-manager form of government at a primary election held in accordance with section 11-3215, the number of nominees shall not exceed the number of officers to be elected, then such nominees shall be deemed duly elected to the respective offices. Then, in that event, no general municipal election shall be held in said city for said year. All matters, other than the election of officers, upon which the general public shall vote shall be disposed of at the primary election unless a special election is held for that purpose.

History: En. Sec. 1, Ch. 75, L. 1955.

Collateral References
Elections⇨31.
29 C.J.S. Elections § 66.

11-3219. (5418) **Filing of election expenses of candidates—penalty for violations.** Every candidate for commissioner shall, within thirty (30) days after the election, file with the clerk of the commission his sworn

statement of all his election and campaign expenses, and by whom such funds were contributed.

Any violation of the provisions of this section, shall be a misdemeanor and if committed by a successful candidate, give ground for the removal from office.

History: En. Sec. 20, Ch. 152, L. 1917; re-en. Sec. 5418, R. C. M. 1921; amd. Sec. 6, Ch. 31, L. 1923.

Collateral References
Elections⇐231.
29 C.J.S. Elections § 216.

11-3220. (5419) **Recall of commissioners—petition for recall.** Any or all of the commissioners provided for in this act may be removed from office by the electors. The procedure to effect such removal, shall be as follows:

A petition demanding that the question of removing such officers be submitted to the electors shall be filed with the clerk of the commission.

Such petition for the recall of any or all of the commissioners shall be signed by at least twenty-five per cent of the total number of registered voters in the municipality.

The signature to such petition need not be appended to any one paper.

History: En. Sec. 21, Ch. 152, L. 1917; re-en. Sec. 5419, R. C. M. 1921.

62 C.J.S. Municipal Corporations § 510.
37 Am. Jur. 874, Municipal Corporations, § 247 et seq.

Collateral References
Municipal Corporations⇐159 (1).

11-3221. (5420) **Issuance of petition papers.** Petition papers shall be procured only from the clerk of the commission, who shall keep a sufficient number of such blank petitions on file for distribution as herein provided. Prior to the issuance of such petition papers, an affidavit shall be made by one or more qualified electors and filed with the clerk of the commission, stating the name and the office of the officer or officers sought to be removed. The clerk of the commission, upon issuing any such petition papers to an elector, shall enter in a record, to be kept in his office, the name of the elector to whom issued, the date of such issuance, and the number of papers issued, and shall certify on such papers the name of the elector to whom issued, and the date issued. No petition papers so issued shall be accepted as part of the petition unless it bears such certificate of the clerk of the commission, and unless it be filed as provided herein.

History: En. Sec. 22, Ch. 152, L. 1917; re-en. Sec. 5420, R. C. M. 1921.

11-3222. (5421) **Signatures and affidavit to petition papers.** Each signer of a recall petition shall sign his name in ink or indelible pencil, and shall place thereon, after his name, his place of residence by street and number. To each such petition paper there shall be attached an affidavit of the circulator thereof, stating the number of signers to such part of the petition, and that each signature appended to the paper was made in his presence and is the genuine signature of the person whose name it purports to be.

History: En. Sec. 23, Ch. 152, L. 1917; re-en. Sec. 5421, R. C. M. 1921.

11-3223. (5422) **Assembling and filing of petition papers.** All papers comprising a recall petition shall be assembled and filed with the clerk of the commission as one instrument within thirty days after the filing with the clerk of the commission of the affidavit stating the name and the office of the officer sought to be removed.

History: En. Sec. 24, Ch. 152, L. 1917; re-en. Sec. 5422, R. C. M. 1921.

11-3224. (5423) **Notification of officer—recall election.** The clerk of the commission shall at once submit the recall petition to the commission, and shall notify the officer sought to be recalled of such action. If the official whose removal is sought does not resign within five days after such notice, the commission shall thereupon order and fix a day for holding a recall election. Any such election shall be held not less than seventy nor more than eighty days after the petition has been presented to the commission, at the same time as any other general or special election held within such period; but if no such election be held within such period, the commission shall call a special recall election to be held within the time aforesaid.

History: En. Sec. 25, Ch. 152, L. 1917; re-en. Sec. 5423, R. C. M. 1921.

11-3225. (5424) **Ballots at recall election—requirements—nomination of candidates to fill vacancies.** The ballots at such recall election shall conform to the following requirements:

With respect to each person whose removal is sought, the question shall be submitted, "Shall (name of person) be removed from the office of (name of office) by recall?"

Immediately following each such question, there shall be printed on the ballots the two propositions, in the order set forth:

"For the recall (name of person).

Against the recall (name of person)."

Immediately to the left of the proposition shall be placed a square in which the electors, by making a cross mark (X), may vote for either of such propositions. Under said questions shall be placed the names of candidates to fill the vacancy or vacancies. The name of the officer or officers whose removal is sought shall not appear on the ballot as a candidate or candidates to succeed himself or themselves.

Before any such recall election for the removal of commissioners shall be had, there shall be nominated candidates to fill the vacancy or vacancies, the nominations therefor to be made by petition, which petition for each candidate shall be signed by at least twenty-five registered electors, and shall be filed at least thirty days prior to the date fixed for holding such recall election; and the form and requirements for said petition shall be the same as hereinbefore provided in the case of primary nominations.

History: En. Sec. 26, Ch. 152, L. 1917; re-en. Sec. 5424, R. C. M. 1921.

11-3226. (5425) **Effect of majority vote for or against recall.** Should a majority of the votes cast at a recall election be against the re-

call of the officer named on the ballot, such officer shall continue in the office for the remainder of his unexpired term, subject to recall as before. If a majority of the votes cast at a recall election shall be for the recall of the officer named on the ballot, he shall, regardless of any technical defects in the recall petition, be deemed removed from office.

History: En. Sec. 27, Ch. 152, L. 1917; re-en. Sec. 5425, R. C. M. 1921.

11-3227. (5426) **Limitation upon time of filing recall petition.** No recall petition shall be filed against a commissioner within six months after he takes his office, nor, in case of an officer re-elected in a recall election, until six months after that election.

History: En. Sec. 28, Ch. 152, L. 1917; re-en. Sec. 5426, R. C. M. 1921.

11-3228. (5427) **Working for candidate forbidden.** Any person who shall agree to perform any services in the interest of any candidate for any office provided in this act, in consideration of any money or other valuable thing for such services performed in the interest of any candidate, shall be punished by a fine not exceeding three hundred dollars, or be imprisoned in the county jail not exceeding thirty days, or both such fine and imprisonment.

History: En. Sec. 29, Ch. 152, L. 1917; re-en. Sec. 5427, R. C. M. 1921.

Collateral References
Elections⇐317.
29 C.J.S. Elections §§ 329, 356.

11-3229. (5428) **Bribery—false answers concerning qualifications of elector—voting by disqualified person.** Any person offering to give a bribe, either in money or other consideration, to any elector for the purpose of influencing his vote at any election provided in this act, or any elector entitled to vote at any such election receiving and accepting such bribe or other consideration; any person who agrees, by promise or written statement, that he will do, or will not do, any particular act or acts, for the purpose of influencing the vote of any elector or electors at any election provided in this act; any person making false answer to any of the provisions of this act relative to his qualifications to vote at such election; any person willfully voting or offering to vote at such election, who has not been a resident of this state for one year next preceding said election, or who is not twenty-one years of age, or is not a citizen of the United States, or knowing himself not to be a qualified elector of such precinct where he offers to vote; any person knowingly procuring, aiding, or abetting any violation hereof, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined a sum of not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail not less than ten nor more than ninety days, or both such fine and imprisonment.

History: En. Sec. 30, Ch. 152, L. 1917; re-en. Sec. 5428, R. C. M. 1921.

Collateral References
Elections⇐316.
29 C.J.S. Elections § 332.

11-3230. (5429) **Proposed ordinances — how submitted — requirements of petition to submit.** Any proposed ordinance may be submitted

to the commission by petition signed by at least ten per cent of the total number of registered voters in the municipality. All petition papers circulated with respect to any proposed ordinance shall be uniform in character and shall contain the proposed ordinance in full, and have printed or written thereon the names and addresses of at least five electors who shall be officially regarded as filing the petition, and shall constitute a committee of the petitioners for the purposes hereinafter named.

History: En. Sec. 31, Ch. 152, L. 1917; re-en. Sec. 5429, R. C. M. 1921.

Collateral References

Municipal Corporations⇐108.

62 C.J.S. Municipal Corporations § 449 et seq.

37 Am. Jur. 841, Municipal Corporations, § 204 et seq.

Character of subject matter of ordinance within operation of initiative and referendum provisions. 122 ALR 769.

Construction and application of constitutional or statutory provisions expressly excepting certain laws from referendum. 146 ALR 284 and 100 ALR 2d 314.

Power of legislative body to amend, repeal, or abrogate initiative or referendum measure to enact measure defeated on referendum. 33 ALR 2d 1118.

11-3231. (5430) **Signatures and affidavit to petitions.** Each signer of a petition shall sign his name in ink or indelible pencil, and shall place on the petition papers, after his name, his place of residence by street and number. The signatures of any such petition papers need not all be appended to one paper, but to each such paper there shall be attached an affidavit by the circulator thereof, stating the number of signers to such part of the petition, and that each signature appended to the paper is the genuine signature of the person whose name it purports to be, and was made in the presence of the affiant.

History: En. Sec. 32, Ch. 152, L. 1917; re-en. Sec. 5430, R. C. M. 1921.

11-3232. (5431) **Assembling and filing of petition papers—hearing upon proposed ordinances—submission to electors.** All papers comprising a petition shall be assembled and filed with the clerk of the commission as one instrument, and when so filed, the clerk of the commission shall submit the proposed ordinance to the commission at its next regular meeting. Provision shall be made for public hearings upon the proposed ordinances.

The commission shall at once proceed to consider it, and shall take final action thereon within thirty days from the date of submission. If the commission rejects the proposed ordinance, or passes it in a different form from that set forth in the petition, the committee of the petitioners may require it to be submitted to a vote of the electors in its original form, or that it be submitted to a vote of the electors with any proposed change, addition, or amendment, if a petition for such election is presented bearing additional signatures of fifteen per cent of the electors of the city or town.

History: En. Sec. 33, Ch. 152, L. 1917; re-en. Sec. 5431, R. C. M. 1921.

11-3233. (5432) **Submission of petition and proposed ordinance to clerk.** When an ordinance proposed by petition is to be submitted to a vote of the electors, the committee of the petitioners shall certify that fact and the proposed ordinance to the clerk of the commission within

twenty days after the final action on such proposed ordinance by the commission.

History: En. Sec. 34, Ch. 152, L. 1917;
re-en. Sec. 5432, R. C. M. 1921.

11-3234. (5433) **When proposed ordinance is to be submitted to electors.** Upon receipt of the certificate and certified copy of the proposed ordinance, the clerk shall certify the fact to the commission at its next regular meeting. If an election is to be held not more than six months nor less than thirty days after the receipt of the clerk's certificate by the commission, such proposed ordinance shall then be submitted to a vote of the electors. If no such election is to be held within the time aforesaid, the commission shall provide for submitting the proposed ordinance to the electors at a special election.

History: En. Sec. 35, Ch. 152, L. 1917;
re-en. Sec. 5433, R. C. M. 1921.

11-3235. (5434) **Contents of ballot—when proposed ordinance becomes effective.** The ballots used when voting upon any such proposed ordinance shall state the title of the ordinance to be voted on, and below it the two propositions, "For the ordinance," and "Against the ordinance." Immediately at the left of each proposition there shall be a square, in which, by making a cross (X), the voter may vote for or against the proposed ordinance. If a majority of the electors voting on any such proposed ordinance shall vote in favor thereof, it shall thereupon become an ordinance of the municipality.

History: En. Sec. 36, Ch. 152, L. 1917;
re-en. Sec. 5434, R. C. M. 1921.

11-3236. (5435) **Repealing ordinances—publication, amendment and repeal of initiated ordinances.** Proposed ordinances for repealing any existing ordinance or ordinances, in whole or in part, may be submitted to the commission as provided in the preceding section for initiating ordinances. Initiated ordinances adopted by the electors shall be published and may be amended or repealed by the commission as in the case of other ordinances.

History: En. Sec. 37, Ch. 152, L. 1917;
re-en. Sec. 5435, R. C. M. 1921.

11-3237. (5436) **When ordinances of commission take effect—petition for repeal suspends effect unless law is complied with.** No ordinance passed by the commission, unless it be an emergency measure, shall go into effect until thirty days after its final passage by the commission. If at any time within the said thirty days, a petition signed by twenty-five per cent of the total number of registered voters in the municipality be filed with the clerk of the commission, requesting that any such ordinance be repealed or submitted to a vote of the electors, it shall not become operative until the steps taken herein shall have been taken.

History: En. Sec. 38, Ch. 152, L. 1917;
re-en. Sec. 5436, R. C. M. 1921.

11-3238. (5437) **Reconsideration of ordinance—submission to electors—failure to approve operates as repeal.** The clerk of the commission shall deliver the petition to the commission, which shall proceed to reconsider the ordinance. If, upon such reconsideration, the ordinance be not entirely repealed, the commission shall provide for submitting to a vote of the electors, and in so doing, the commission shall be governed by the provisions herein contained, respecting the time of submission and manner of voting on ordinances proposed to the commission by petition. If, when submitted to a vote of the electors, any such ordinance be not approved by a majority of those voting thereon, it shall be deemed repealed.

History: En. Sec. 39, Ch. 152, L. 1917;
re-en. Sec. 5437, R. C. M. 1921.

11-3239. (5438) **Contents and requirements of referendum petitions—ballots.** Referendum petitions need not contain the text of the ordinance, the repeal of which is sought, but shall be subject in all other respects to the requirements for petitions submitting proposed ordinances to the commission. Ballots used in referendum elections shall conform in all respects to those provided for in section 11-3235 of this code.

History: En. Sec. 40, Ch. 152, L. 1917;
re-en. Sec. 5438, R. C. M. 1921.

11-3240. (5439) **Other ordinances subject to referendum.** Ordinances submitted to the commission by initiative petition and passed by the commission without change, or passed in an amended form and not required to be submitted to a vote of the electors by the committee of the petitioners, shall be subject to a referendum in the same manner as other ordinances.

History: En. Sec. 41, Ch. 152, L. 1917;
re-en. Sec. 5439, R. C. M. 1921.

11-3241. (5440) **Highest affirmative vote prevails when referendum ordinances conflict.** If the provisions of two or more ordinances adopted or approved at the same election conflict, the ordinance receiving the highest affirmative vote shall prevail.

History: En. Sec. 42, Ch. 152, L. 1917;
re-en. Sec. 5440, R. C. M. 1921.

11-3242. (5441) **Emergency ordinances subject to referendum—rules applicable.** Ordinances passed as emergency measures shall be subject to a referendum in like manner as other ordinances, except that they shall go into effect at the time indicated in such ordinances. If, when submitted to a vote of the electors, an emergency measure be not approved by a majority of those voting thereon, it shall be considered repealed as regards any further action thereunder; but such measure so repealed shall be deemed sufficient authority for payment, in accordance with the ordinance, of any expense incurred previous to the referendum vote thereon.

History: En. Sec. 43, Ch. 152, L. 1917;
re-en. Sec. 5441, R. C. M. 1921.

11-3243. (5442) **Ordinances providing for expenditures, bond issues, public improvements submitted to electors—preliminary steps prior**

to election—qualifications of electors. In case a petition be filed requiring that a measure passed by the commission providing for an expenditure of money, a bond issue, or a public improvement be submitted to a vote of the electors, all steps preliminary to such expenditure, actual issuance of the bonds, or actual execution of the contract for such improvement, may be taken prior to the election; and at such election only resident taxpayers of such city or town whose names as such appear upon the assessment roll and who are also qualified electors of said city or town, shall be entitled to vote at such election. And at any and all elections in such city or town at which questions relating to bond issues, tax levies, or the expenditure of money shall be submitted, no person shall be entitled to vote unless qualified as in this section provided.

History: En. Sec. 44, Ch. 152, L. 1917; re-en. Sec. 5442, R. C. M. 1921; amd. Sec. 7, Ch. 31, L. 1923.

11-3244. (5443) **Oath of commissioners.** Every person who has been declared elected commissioner, shall within ten (10) days thereafter take and file with the clerk of the commission his oath of office in the form and manner provided by law.

History: En. Sec. 45, Ch. 152, L. 1917; re-en. Sec. 5443, R. C. M. 1921; amd. Sec. 8, Ch. 31, L. 1923; amd. Sec. 9, Ch. 67, L. 1967.

Saving Clause

Section 10 of Ch. 67, Laws 1967, read "This act shall not affect the validity of bonds in effect on the effective date of this act."

Cross-Reference

Official bonds of city officers, sec. 6-601 et seq.

Collateral References

Municipal Corporations⇐144, 145.

62 C.J.S. Municipal Corporations §§ 490, 491.

11-3245. (5444) **Designation of mayor—procedure in case of tie vote—vacancy in office of mayor—powers and duties of mayor.** The mayor shall be that member of the commission, who, at the regular municipal election at which the commissioners were elected, received the highest number of votes. In case two candidates receive the same number of votes, one of them shall be chosen mayor by the remaining members of the commission. In event of a vacancy in the office of the mayor, by the expiration of his term of office, the holdover commissioner having received the highest number of votes shall be the mayor. In the event there is a vacancy in the office of the mayor for any other cause, the remaining members of the commission shall choose his successor for the unexpired term from their own number by lot. The mayor shall be the presiding officer, except that in his absence, a president pro tempore may be chosen. The mayor shall exercise such powers conferred, and perform all duties imposed upon him by this act, the ordinances of the municipality and the laws of the state, except that he shall have no power to veto any measure. He shall be recognized as the official head of the municipality by the courts for the purpose of serving civil processes, by the governor for the purposes of the military law, and for all ceremonial purposes.

History: En. Sec. 46, Ch. 152, L. 1917; re-en. Sec. 5444, R. C. M. 1921; amd. Sec. 9, Ch. 31, L. 1923.

Collateral References

Municipal Corporations⇐129, 168.

62 C.J.S. Municipal Corporations §§ 468, 543.

11-3246. (5445) **Selection of successor to mayor in event of his recall—mayor when all commissioners are recalled.** In the event that the commissioner who is acting as mayor shall be recalled, the remaining members of the commission shall select one of their number to serve as mayor for the unexpired term. In the event of the recall of all the commissioners, the person receiving the highest number of votes at the election held to determine their successor shall serve as the mayor.

History: En. Sec. 47, Ch. 152, L. 1917; re-en. Sec. 5445, R. C. M. 1921.

Collateral References

Municipal Corporations⇐149 (1).

62 C.J.S. Municipal Corporations § 495 et seq.

11-3247. (5446) **Quorum of commissioners—recording votes and proceedings.** In municipalities having three commissioners, two commissioners shall constitute a quorum; and the affirmative vote of two commissioners shall be necessary to adopt or reject any motion, resolution, or ordinance, or pass any measure unless a greater number is provided for in this act. In municipalities having five commissioners, three commissioners shall constitute a quorum, and the affirmative vote of three commissioners shall be necessary to adopt or reject any motion, resolution, or ordinance, or pass any measure unless a greater number is provided for in this act. Upon every vote, the ayes and the nays shall be called and recorded, and every motion, resolution, or ordinance shall be reduced to writing and read before the vote is taken thereon.

History: En. Sec. 48, Ch. 152, L. 1917; re-en. Sec. 5446, R. C. M. 1921.

Collateral References

Municipal Corporations⇐90, 96, 97.

62 C.J.S. Municipal Corporations §§ 399, 403, 404.

11-3248. (5447) **Compensation of commissioners and mayor.** The salary of each commissioner may be as follows: For each meeting attended, cities or towns with less than twenty-five thousand inhabitants, twenty dollars ($20.00); cities with more than twenty-five thousand inhabitants, not to exceed forty dollars ($40.00); provided, that not more than one fee shall be paid for any one day. The salary of the commissioner acting as mayor may be one and one-half times that of the other commissioners.

History: En. Sec. 49, Ch. 152, L. 1917; amd. Sec. 2, Ch. 44, L. 1919; re-en. Sec. 5447, R. C. M. 1921; amd. Sec. 1, Ch. 10, L. 1949; amd. Sec. 1, Ch. 71, L. 1965.

11-3249. (5448) **Meetings of commission — unauthorized absence creates vacancy—meetings and minutes to be public—rules and order of business.** At ten o'clock a. m. on the first Monday after the first day of January, following a regular municipal election, the commission shall meet at the usual place for holding the meetings of the legislative body of the municipality, at which time the newly elected commissioners shall assume the duties of their office. Thereafter, the commissioners shall meet at such times as may be prescribed by ordinance or resolution, except that in municipalities having less than five thousand inhabitants, they shall meet regularly at least once and not more than four times per month, and in municipalities having more than five thousand inhabitants, they shall meet

not less than once every two weeks. Absence from five (5) consecutive regular meetings shall operate to vacate the seat of a member, unless such absence be authorized by the commission.

The commissioner acting as mayor, any two members of the commission or the city manager, may call special meetings of the commission upon at least twelve (12) hours written notice to each member of the commission, served personally on each member or left at his usual place of residence. All meetings of the commission shall be public and any citizen shall have access to the minutes and records thereof at all reasonable times. The commission shall determine its own rules and order of business and shall keep a journal of its proceedings.

History: En. Sec. 50, Ch. 152, L. 1917; re-en. Sec. 5448, R. C. M. 1921; amd. Sec. 10, Ch. 31, L. 1923.

11-3250. (5449) **Form of ordinances and resolutions — appropriations—manner of passing and approving—amendments.** Each proposed ordinance or resolution shall be introduced in written or printed form, and shall not contain more than one subject, which shall be clearly stated in the title; but general appropriation ordinances may contain the various subjects and accounts for which moneys are to be appropriated. The enacting clause of all ordinances passed by the commission shall be, "Be it ordained by the commission of the (city or town) of (name of city or town)." The enacting clause of all ordinances submitted by the initiative shall be, "Be it ordained by the people of the (city or town) of (name of city or town)."

No ordinance, unless it be declared an emergency, shall be passed on the day on which it shall have been introduced, unless so ordered by an affirmative vote of four-fifths of the members of the commission in cities with five commissioners and two-thirds of the members of the commission in all other cities and towns. Every ordinance or resolution passed by the commission shall be signed by the mayor or two members, and filed with the clerk within two days, and by him recorded.

No ordinance or resolution or section thereof shall be revised or amended, unless the new ordinance or resolution contains the entire ordinance or resolution or section revised or amended.

History: En. Sec. 51, Ch. 152, L. 1917; re-en. Sec. 5449, R. C. M. 1921; amd. Sec. 11, Ch. 31, L. 1923.

62 C.J.S. Municipal Corporations § 416 et seq.

37 Am. Jur. 754, Municipal Corporations, § 141 et seq.

Collateral References

Municipal Corporations⇐106 (1), (2), 107 (2), 112 (1-3).

11-3251. (5450) **Form of ordinances and resolutions—appropriations—manner of passing and approving—amendments—time of taking effect—emergency measures—ordinances which cannot pass as such.** All ordinances and resolutions shall be in effect from and after thirty days from the date of their passage by the commission, except as otherwise provided in this act. The commission may, by an affirmative vote of all the members, pass emergency measures to take effect at the time indicated

therein. An emergency measure is an ordinance or resolution for the immediate preservation of the public peace, property, health, or safety, or providing for the usual daily operation of a municipal department, in which the emergency is set forth and defined in a preamble thereto. Ordinances or resolutions appropriating money, or ordering any street improvement or sewer, unless it is endangering the health or safety of the inhabitants, or granting any franchise, or extension of franchise or other special privilege, or regulating the rate to be charged for its services by any public utility, or right to occupy or use the streets, highways, bridges, or other public places, shall never be passed as emergency measures.

History: En. Sec. 52, Ch. 152, L. 1917; re-en. Sec. 5450, R. C. M. 1921.

Collateral References

Municipal Corporations⇐120.
62 C.J.S. Municipal Corporations § 442.

11-3252. (5451) **Appointment of clerk and other officers—duties of clerk.** The commission shall choose a clerk and such other officers and employees of its own body as are necessary. The clerk shall be known as the clerk of the commission, and shall keep records and perform such other duties as may be required by this act or the commission.

History: En. Sec. 53, Ch. 152, L. 1917; re-en. Sec. 5451, R. C. M. 1921.

11-3253. (5452) **Auditing books of accounts, records, etc.—matters to be included in statement—printing and distribution of report—publication of summary.** The commission shall cause an annual audit to be made of the books of account, records and transactions of the administrative department of the municipality. Such audit, during each fiscal year, shall be made by the state examiner. The duty of the state examiner shall include the certifications of all statements required under section 11-3267 of this code. Such statements shall include a general balance sheet, exhibiting the assets and liabilities of the municipality, supported by departmental schedules and schedules for each utility publicly owned or operated; summaries of income and expenditure, supported by detailed schedules; and also comparisons, in proper classifications, with the previous year. The state examiner shall have the power, and it shall be his duty to make at least one examination each year of the books and accounts of any city operating under the commission-manager form of government, and to prescribe the necessary records, and systems of accounting as provided in sections 82-1002, 82-1005, 82-1007, 82-1008, 82-1009 and 82-1010, and the actions of the city commissioners and all other officers thereof shall be subject to the provisions of said sections, and such city shall pay the fee provided for in section 5-905.

History: En. Sec. 54, Ch. 152, L. 1917; re-en. Sec. 5452, R. C. M. 1921; amd. Sec. 1, Ch. 208, L. 1953.

Collateral References

Municipal Corporations⇐885.
64 C.J.S. Municipal Corporations § 1885.

11-3254. (5453) **Record of ordinances and resolutions, and authorization thereof—publication of number and title.** Every ordinance or resolution upon its final passage shall be recorded in a book kept for that purpose, and shall be authenticated by the signature of the presiding officer and the clerk of the commission. At least the number and title of every

ordinance or resolution shall be published at least once within ten days after its final passage in such manner as is provided in this act.

History: En. Sec. 55, Ch. 152, L. 1917; re-en. Sec. 5453, R. C. M. 1921.

Collateral References

Municipal Corporations⇐107 (2), 109, 110.

62 C.J.S. Municipal Corporations §§ 425-427.

11-3255. (5454) **Investigation of financial transactions—powers in conducting investigations—contempt—privilege of witness.** The commission, or any committee thereof, duly authorized by the commission so to do, may investigate the financial transactions of any office or department of the municipal government and the official acts of any municipal official, and by similar investigations may secure information upon any matter. In conducting such investigations, the commission or any committee thereof may compel the attendance of witnesses and the production of books, papers, and other evidence, and for that purpose may issue subpoenas or attachments which shall be signed by the presiding officer of the commission or the chairman of such committee, as the case may be, which may be served and executed by any officer authorized by law to serve subpoenas or other process. If any witness shall refuse to testify to any facts within his knowledge, or to produce any papers or books in his possession, or under his control, relating to the matter under inquiry, before the commission, or any such committee, the commission shall have the power to cause the witness to be punished for contempt. No witness shall be excused from testifying touching his knowledge of the matter under investigation in any such inquiry, but such testimony shall not be used against him in any criminal prosecution, except for perjury committed upon such inquiry.

History: En. Sec. 56, Ch. 152, L. 1917; re-en. Sec. 5454, R. C. M. 1921.

Collateral References

Municipal Corporations⇐167.

62 C.J.S. Municipal Corporations § 542.

11-3256. (5455) **Appointment of city manager.** The commission shall appoint a city manager, who shall be the administrative head of the municipal government, and shall be responsible for the efficient administration of all departments. He shall be appointed without regard to his political beliefs, and may or may not be a resident of the municipality when appointed. He shall hold office at the will of the commission.

History: En. Sec. 57, Ch. 152, L. 1917; re-en. Sec. 5455, R. C. M. 1921.

62 C.J.S. Municipal Corporations § 468 et seq.

Collateral References

Municipal Corporations⇐131.

Constitutionality of city manager form of government. 67 ALR 737.

11-3257. (5456) **Powers and duties of city manager.** The powers and duties of the city manager shall be:

1. To see that the laws and ordinances are enforced;

2. To appoint and, except as herein provided, remove all directors of departments and all subordinate officers and employees in the departments in both the classified and unclassified service; all appointments to be upon

merit and fitness alone, and in the classified service all appointments to be subject to the civil service provisions of this act;

3. To exercise control over all the departments and divisions created herein, or that may hereafter be created by the commission;

4. To attend all meetings of the commission, with the right to take part in the discussions, but having no vote;

5. To recommend to the commission for adoption such measures as he may deem necessary or expedient;

6. To keep the commission fully advised as to the financial condition and needs of the city; and

7. To perform such other duties as may be prescribed by this act, or be required of him by ordinance or resolution of the commission.

History: En. Sec. 58, Ch. 152, L. 1917; re-en. Sec. 5456, R. C. M. 1921.

Liability for acts or omissions of city manager, 38 ALR 1412.

Collateral References

Municipal Corporations⇨168.
62 C.J.S. Municipal Corporations § 543.

11-3258. (5457) **Salary of city manager.** The city manager shall receive such salary as may be fixed by ordinance of the commission, but such salary shall not be decreased during the term of office that the city manager is appointed for.

History: En. Sec. 59, Ch. 152, L. 1917; re-en. Sec. 5457, R. C. M. 1921.

11-3259. (5458) **City manager may cause examinations of departments or the conduct of officers or employees—powers in conducting.** The city manager may, without notice, cause the affairs of any department or the conduct of any officer or employee to be examined. Any person or persons appointed by the city manager to examine the affairs of any department, or the conduct of any officer or employee, shall have the same power to compel the attendance of witnesses and the production of books and papers and other evidence, and to cause witnesses to be punished for contempt, as is conferred upon the commission by this act.

History: En. Sec. 60, Ch. 152, L. 1917; re-en. Sec. 5458, R. C. M. 1921.

Collateral References

Municipal Corporations⇨168.
62 C.J.S. Municipal Corporations § 543.

11-3260. (5459) **Administrative departments—power of commission concerning.** The following administrative departments are hereby established by this act.

1. Department of law;
2. Department of public service;
3. Department of public welfare;
4. Department of public safety;
5. Department of finance.

The commission may by ordinance discontinue any or several departments, and determine, combine, and distribute the functions and duties of these departments and subdivisions thereof.

History: En. Sec. 61, Ch. 152, L. 1917; re-en. Sec. 5459, R. C. M. 1921.

Collateral References
Municipal Corporations⇨177.
62 C.J.S. Municipal Corporations § 551.

11-3261. (5460) **Appointment and removal of directors of departments—powers and duties of directors.** The city manager shall appoint a director for each department, as specified herein or as specified by ordinance of the commission, who shall serve until removed by the city manager, or until his successor is appointed and has qualified. Each director shall conduct the affairs of his department in accordance with the rules and regulations made by the city manager, and shall be responsible for the conduct of the officers and employees of his department, for the performance of its business, and for the custody and preservation of the books, records, papers, and property under its control. Subject to the supervision and control of the city manager in all matters, the director of each department shall manage the department.

History: En. Sec. 62, Ch. 152, L. 1917; re-en. Sec. 5460, R. C. M. 1921.

Collateral References
Municipal Corporations⇨131.
62 C.J.S. Municipal Corporations §§ 473, 474.

11-3262. (5461) **Municipal plan board—advisory boards.** The commission may appoint a municipal plan board, and upon the request of the city manager shall appoint advisory boards. The members of such boards shall serve without compensation, and their duty shall be to consult and advise with the various departments. The duties and powers thus created shall be prescribed by ordinance.

History: En. Sec. 63, Ch. 152, L. 1917; re-en. Sec. 5461, R. C. M. 1921.

11-3263. (5462) **Department of law.** The head of the department of law shall be an attorney at law, who has been admitted to practice in the state of Montana, and shall be known as the city attorney. He shall be the legal adviser of and attorney and counsel for the municipality, and for all the officers and departments thereof in matters relating to their official duties. He shall prosecute and defend all suits for and in behalf of the municipality, and shall prepare all contracts, bonds, and other instruments in writing in which the municipality is concerned, and shall endorse on each his approval of the form and correctness thereof. He shall have such other duties and authority as are not conferred upon the city attorney by existing laws. He shall have such number of assistants as the commission by ordinance may authorize.

History: En. Sec. 64, Ch. 152, L. 1917; re-en. Sec. 5462, R. C. M. 1921.

Collateral References
Municipal Corporations⇨138, 169.
62 C.J.S. Municipal Corporations §§ 476, 544.

11-3264. (5463) **Department of public service.** Subject to the control and supervision of the city manager in all matters, the director of public service shall manage and have charge of the construction, improvement, repair, and maintenance of streets, sidewalks, alleys, lanes, bridges, viaducts, and other public highways; of sewers, drains, ditches, culverts,

canals, streams, and watercourses; of boulevards, squares, and other public places and grounds belonging to the municipality or dedicated to public use, except parks and playgrounds. He shall manage market houses, sewerage disposal plants and farms, and all public utilities of the municipality. He shall have charge of the enforcement of all obligations of privately owned or operated public utilities enforcible by the municipality. He shall have charge of the making and preservation of all surveys, maps, plans, drawings, and estimates for public work; the cleaning, sprinkling, and lighting of streets and public places; the collection and disposal of waste; the preservation of contracts, papers, plans, tools, and appliances belonging to the municipality, and pertaining to the department.

History: En. Sec. 65, Ch. 152, L. 1917; re-en. Sec. 5463, R. C. M. 1921.

Collateral References

Municipal Corporations⊂⇒178.

62 C.J.S. Municipal Corporations § 556 et seq.

11-3265. (5464) **Department of public welfare.** Subject to the supervision and control of the city manager in all matters, the director of public welfare shall manage all charitable, correctional, and reformatory institutions and agencies belonging to the municipality; the use of all recreational facilities of the municipality, including libraries, parks, and playgrounds. He shall have charge of the inspection and supervision of public amusements and entertainments. He shall enforce all laws, ordinances, and regulations relative to the preservation and promotion of the public health, the prevention and restriction of disease, the prevention, abatement, and suppression of nuisances, and the sanitary inspection and supervision of the production, transportation, storage, and sale of foodstuffs. He shall cause a complete and accurate system of vital statistics to be kept. In time of epidemic, or threatened epidemic, he may enforce such quarantine regulations as are appropriate to the emergency. The director of public welfare shall provide for the study of and research into causes of poverty, delinquency, crime, and disease, and other social problems in the community, and shall, by means of lectures and exhibits, promote the education and understanding of the community in those matters which affect the public welfare.

The health officer of the municipality shall be under the direction and control of the director of public welfare, and shall enforce all ordinances and laws relating to health, and shall perform all duties and have all powers provided by general law relative to the public health to be exercised in municipalities by health officers; provided, that regulations affecting the public health additional to those established by general law, and for the violation of which penalties are imposed, shall be enacted by the commission and enforced as provided herein.

History: En. Sec. 66, Ch. 152, L. 1917; re-en. Sec. 5464, R. C. M. 1921.

Collateral References

Municipal Corporations⊂⇒210, 212.

62 C.J.S. Municipal Corporations §§ 645 et seq., 667 et seq.

11-3266. (5465) **Department of public safety—police and fire departments.** (1) Subject to the supervision and control of the city manager in all matters, the director of public safety shall be the executive head of

the division of police and fire. He shall also be the chief administrative authority in all matters affecting the inspection and regulation of the erection, maintenance, repair and occupancy of buildings as may be ordained by the commission or established by the general law of the state of Montana. He shall also be charged with the enforcement of all laws and ordinances relating to weights and measures.

(2) The chief of police shall have exclusive control of the stationing and transfer of all patrolmen and other officers and employees constituting the police force, under such rules and regulations as the director of public safety may prescribe. The police force shall be composed of a chief of police and such officers, patrolmen and other employees as the city manager may determine. In case of riot, or in event of emergency, or at time of elections or similar occasions, the director of public safety may appoint additional patrolmen and officers for temporary service who need not be in the classified service.

(3) No person shall act as special policeman, special detective or other special police officer for any purpose whatsoever, except upon the written authority of the director of public safety. Such authority shall be exercised only under the direction and control of the chief of police and for a specified time.

(4) The fire chief shall have exclusive control of the stationing and transfer of all firemen and other officers and employees constituting the fire force under such rules and regulations as the director of public safety may prescribe. The fire force shall be composed of a chief and such other officers, firemen and employees as the city manager may from time to time determine. In case of riot, conflagration or emergency, the director of public safety may appoint additional firemen and other officers for temporary service who need not be in the classified service.

(5) Chapter 18 of this title shall in all respects be applicable to and govern the police departments of all cities and towns under the commission-manager form of government provided for herein and the provisions of chapter 19 of this title shall in all respects be applicable to and govern fire departments of all cities and towns operating under the said commission-manager plan of government, said chapters and sections shall apply and govern, notwithstanding any renumbering, or rearrangement of the same in any revision of the codes.

(6) Nothing herein shall affect, impair, restrict or repeal any provisions of general law authorizing the levying of taxes to provide for firemen, police and sanitary police pension funds, and to create and perpetuate boards of trustees for the administration of such funds.

History: En. Sec. 67, Ch. 152, L. 1917; re-en. Sec. 5465, R. C. M. 1921; amd. Sec. 12, Ch. 31, L. 1923; amd. Sec. 1, Ch. 173, L. 1925; amd. Sec. 1, Ch. 150, L. 1947.

Collateral References

Municipal Corporations⇐180 (1) et seq.
62 C.J.S. Municipal Corporations § 567 et seq.

11-3267. (5466) **Department of finance — accounts — collection and disbursement of funds—purchase and sale of property and supplies.** (1) The duties of the director of finance shall include the keeping and supervision of all accounts and the custody of all public money of the munici-

pality; the purchase, storage and distribution of supplies needed by the various departments; the making and collection of special assessments; the issuance of licenses; the collection of license fees and taxes and such other duties as the commission may, by ordinance require.

(2) He shall install and have supervision over the accounts of all the departments and offices of the municipality. Whenever practicable the books of financial accounts shall be kept in the office of the department of finance. He shall require daily departmental reports of money receipts and the disposition thereof; and shall require of each, in such form as may be prescribed, current financial and operating statements exhibiting each transaction and the cost thereof.

(3) Upon the death, resignation, removal or expiration of the term of any officer, he shall examine the accounts of such officer and report his findings to the city manager.

(4) Accounting procedure shall be devised and maintained for the municipality adequate to record in detail all transactions affecting the acquisition, custodianship and disposition of values, including cash receipts and disbursements; and the recorded facts shall be presented periodically to officials and to the public in such summaries and analytical schedules in detailed support thereof as may be necessary to show the full effect of such transactions for each fiscal year upon the finances of the municipality and in relation to each department of the municipal government, including distinct summaries and schedules for each utility publicly owned and operated.

(5) He shall have charge of the preparation and certification of all special assessments for public improvements; the mailing of notices of such assessments to property owners and all other duties connected therewith; the collection of such assessments as are payable directly to the municipality and the preparation and certification of all unpaid assessments to the county treasurer for collection. He shall issue all licenses and collect all fees therefor and shall pay the same into the treasury in the manner provided by ordinance.

(6) No warrant for the payment of any claims shall be issued unless such claim shall be evidenced by a voucher approved by the head of the department for which the indebtedness was incurred and countersigned by the city manager. Before issuing such voucher, the supplies and material delivered, or work done, shall be duly inspected and certified to by the head of the proper department or office, or by a person designated by him. The head of each department or office shall require proper time reports from all service rendered to be certified by those having cognizance thereof, to serve as a basis for the preparation of payroll vouchers. Each director of a department and his surety shall be liable to the municipality for all loss or damage sustained by the municipality, by reason of the negligent or corrupt approval of any claim against the municipality in his department. Prior to the drawing of a warrant for the payment of any voucher or claim, the director of finance may at his discretion cause an investigation or inspection to be made by a person designated by him, and shall have power to summon persons and examine them under oath or affirmation which oath or affirmation he may administer.

(7) The director of finance shall be the custodian of all public money of the municipality and all other public money coming into his hands. He shall keep and preserve such money in the place or places determined by ordinance or by the provisions of any law applicable thereto. Except as otherwise provided in this act he shall collect, receive and disburse all public money of the municipality upon warrant, and shall also receive and disburse all other public money coming into his hands in pursuance of such regulations as may be prescribed by the authorities having lawful control over such funds.

(8) The director of finance or city manager shall, in manner provided by ordinance, purchase all supplies for the municipality, sell all real and personal property of the municipality not needed or unsuitable for public use or that may have been condemned as useless by the director of a department. He shall have charge of such store rooms and store houses of the municipality as may be provided by ordinance, in which shall be stored all supplies and materials purchased by the municipality and not delivered to the various departments.

(9) He shall inspect all supplies delivered to determine quality and quantity and conformance with specifications, and no voucher shall be honored unless the accompanying invoice shall be endorsed as approved.

(10) He may require from the director of each department at such times as contracts for supplies are to be let, a requisition for the quantity and kind of supplies to be paid for from the appropriations of the department.

(11) Upon certification that funds are available in the proper appropriations, such goods shall be purchased and shall be paid for from funds in the proper department for that purpose. However, this procedure shall not prejudice the director of finance or city manager from purchasing goods for cash to the credit of the stores account, to be furnished the several departments on requisition, goods so furnished to be paid for by the department furnished therewith by warrant made payable to the stores account.

He shall not furnish any supplies to or purchase any supplies for any department unless there be to the credit of such department an available appropriation balance in excess of all unpaid obligations sufficient to pay for such supplies.

(12) Before making any purchase or sale, the director of finance or city manager shall give opportunity for competition, all proposals to be upon precise specifications, and under such rules and regulations as the commission shall establish. Each order of purchase or sale, to be approved and countersigned by the city manager or his deputy.

(13) In cases of emergency purchases may be made without competition, if a sufficient appropriation has theretofore been made against which purchases may lawfully be charged. In such cases, a copy of the order issued, shall be filed with the director of finance, together with a certificate by the head of the department, stating the facts of the emergency. A copy of this certificate shall be attached to and filed with the voucher covering payment for the supplies. The director of finance shall have such assist-

ants and force of office employees as may be necessary to properly carry out his duties under the provisions of this act. If it is found desirable, he may divide his office into divisions presided over by the following officers: accountant, treasurer and purchasing agent.

History: En. Sec. 68, Ch. 152, L. 1917; re-en. Sec. 5466, R. C. M. 1921; amd. Sec. 13, Ch. 31, L. 1923.

Collateral References
Municipal Corporations⇐169, 172.
62 C.J.S. Municipal Corporations §§ 544, 546.

11-3268. (5467) **Sinking fund trustees.** The members of the commission, the city manager, and the director of finance shall constitute the sinking fund trustees. The mayor shall be the president, and the director of finance shall be the secretary of the trustees of the sinking fund. The trustees of the sinking fund shall manage and control the sinking fund in the manner provided by laws of the state of Montana or by ordinance.

History: En. Sec. 69, Ch. 152, L. 1917; re-en. Sec. 5467, R. C. M. 1921.

Collateral References
Municipal Corporations⇐951.
64 C.J.S. Municipal Corporations § 1953.

11-3269. (5468) **Advertising and matter for publication.** All public advertising or publication mentioned as being necessary under the provisions of this act, shall be in a daily newspaper of general circulation within the municipality, if there be such, otherwise in a weekly newspaper published therein, and shall be done by contract, or in a journal published by the municipality, as may be determined by ordinance. If such contract shall be with a newspaper, it shall be entered into only after opportunity has been given for competition under such rules and regulations as the commission may establish, and for a term not longer than one year.

History: En. Sec. 70, Ch. 152, L. 1917; re-en. Sec. 5468, R. C. M. 1921.

Collateral References
Municipal Corporations⇐237.
63 C.J.S. Municipal Corporations § 995 et seq.

11-3270. (5469) **Limit on amount of contract not approved by city manager and commission.** No contract involving an expenditure of more than two hundred and fifty dollars for material or supplies shall be awarded, except upon the approval of the city manager and the commission.

History: En. Sec. 71, Ch. 152, L. 1917; re-en. Sec. 5469, R. C. M. 1921.

Collateral References
Municipal Corporations⇐230.
63 Municipal Corporations § 982 et seq.

11-3271. (5470) **Police judge—appointment and powers.** The commission shall appoint a police judge who shall have the power and authority now conferred by existing laws and shall hold his office at the will of the commission.

History: En. Sec. 72, Ch. 152, L. 1917; re-en. Sec. 5470, R. C. M. 1921; amd. Sec. 14, Ch. 31, L. 1923.

Collateral References
Judges⇐3.
48 C.J.S. Judges §§ 12, 13, 19.

11-3272. (5471) **Civil service board—establishment—term of office—removal of members—abolishment.** The commission may appoint three electors of the municipality as a civil service board; one to serve for

two years, and one for four years and one for six years, to take office on the first day of January after the municipality comes under the provisions of this act, or as soon thereafter as appointed and qualified. Thereafter members of the civil service board shall be appointed to serve for six years and until their successors have been appointed and have qualified. Members of the board shall not hold any other public office. The commission may remove any member of the board upon stating in writing the reasons for removal and allowing him an opportunity to be heard in his own defense. Any vacancy shall be filled by the commission for the unexpired term.

Immediately after appointment, the board shall organize by electing one of its members chairman. The board shall appoint a chief examiner who shall also act as secretary. The board may appoint such other subordinates as may by appropriation be provided for. It is intended hereby that the establishment of a civil service board shall be permissive and not mandatory. If appointed the board may be abolished at any time upon resolution to that effect by the commission and thereafter any civil service board appointed under the provisions of this act shall cease to exist, but so long as any such civil service board shall exist its operations and proceedings shall be controlled as in this act hereinafter provided.

History: En. Sec. 73, Ch. 152, L. 1917; re-en. Sec. 5471, R. C. M. 1921; amd. Sec. 15, Ch. 31, L. 1923.

Collateral References

Municipal Corporations⇨126, 131, 149 (2), 159 (1).

62 C.J.S. Municipal Corporations §§ 466, 468, 496, 510.

15 Am. Jur. 2d 469, Civil Service, § 7.

11-3273. (5472) **Classified and unclassified service.** The civil service of a municipality is hereby divided into the unclassified and the classified service.

1. The unclassified service shall include:

(a) All officers elected by the people;

(b) The city manager;

(c) The heads of departments and heads of divisions of departments, and members of appointive boards;

(d) The deputies and secretaries of the city manager, and one assistant or deputy, and one secretary for each department, and the clerk of the commission.

2. The classified service shall comprise all positions not specifically included in this act in the unclassified service. There shall be in the classified service three classes, to be known as the competitive class, the noncompetitive class, and the labor class.

(a) The competitive class shall include all positions and employment for which it is practicable to determine the merit and fitness of applicants by competitive examination;

(b) The noncompetitive class shall consist of all positions and employment requiring peculiar and exceptional qualifications of a scientific, managerial, professional, or educational character. No competitive examinations will be given for these positions, but the past achievements of the applicant will be considered;

(c) The labor class shall include ordinary unskilled labor, which is employed by the year.

History: En. Sec. 74, Ch. 152, L. 1917; re-en. Sec. 5472, R. C. M. 1921.

Collateral References
Municipal Corporations⇐125.
62 C.J.S. Municipal Corporations § 469.

11-3274. (5473) **Rules and regulations governing appointments — other duties of board.** The board, subject to the approval of the commission, shall adopt, amend, and enforce a code of rules and regulations, providing for appointment and employment in all positions in the classified service, based on merit, efficiency, character, and industry, which shall have the force and effect of law; shall make investigations concerning the enforcement and effect of this chapter, and of the rules adopted. It shall make an annual report to the commission.

History: En. Sec. 75, Ch. 152, L. 1917; re-en. Sec. 5473, R. C. M. 1921.

11-3275. (5474) **Chief examiner—duties.** The chief examiner shall be the employment officer of all municipal employees coming under the classified service. He shall provide examinations in accordance with the regulations of the board, and maintain lists of eligibles of each class of the service of those meeting the requirements of said regulations. Positions in the classified service shall be filled by him from such eligible lists upon requisition from and after consultation with the city manager. As positions are filled, the employment officer shall certify the fact, by proper and prescribed form, to the director of finance and the director of the department in which the vacancy exists.

History: En. Sec. 76, Ch. 152, L. 1917; re-en. Sec. 5474, R. C. M. 1921.

Collateral References
Municipal Corporations⇐169.
62 C.J.S. Municipal Corporations § 544.

11-3276. (5475) **Promotions in classified service.** The board shall provide for promotion to all positions in the classified service, based on records of merit, efficiency, character, conduct, and seniority.

History: En. Sec. 77, Ch. 152, L. 1917; re-en. Sec. 5475, R. C. M. 1921.

Collateral References
Municipal Corporations⇐133.
62 C.J.S. Municipal Corporations § 469.
15 Am. Jur. 2d 483, Civil Service, § 20 et seq.

11-3277. (5476) **Probationary period.** An appointment or promotion shall not be deemed complete until a period of probation not to exceed six months has elapsed and a probationer may be discharged or reduced at any time within the said period of six months, upon the recommendation of the head of the department in which said probationer is employed, with the approval of the majority of the board.

History: En. Sec. 78, Ch. 152, L. 1917; re-en. Sec. 5476, R. C. M. 1921.

Collateral References
Municipal Corporations⇐158.
62 C.J.S. Municipal Corporations § 518.

11-3278. (5477) **Discharges or reductions in rank—how made.** An employee shall not be discharged or reduced in rank or compensation un-

til he has been presented with the reasons for such discharge or reduction, specifically stated in writing, and has been given an opportunity to be heard in his own defense. The reason for such discharge or reduction, and any reply in writing thereto by such employee, shall be filed with the board.

History: En. Sec. 79, Ch. 152, L. 1917; re-en. Sec. 5477, R. C. M. 1921.

Collateral References
15 Am. Jur. 2d 494, Civil Service, § 33.

11-3279. (5478) **Appeal to civil service board.** Any employee of any department in the municipality in the classified service who is suspended, reduced in rank, or dismissed from a department by the director of that department or the city manager, may appeal from the decision of such officer to the civil service board, and such board shall define the manner, time, and place in which such appeal shall be heard. The judgment of such board shall be final.

History: En. Sec. 80, Ch. 152, L. 1917; re-en. Sec. 5478, R. C. M. 1921.

Collateral References
Municipal Corporations⇨159 (6).
62 C.J.S. Municipal Corporations § 510.

11-3280. (5479) **Present incumbents to retain positions unless same are abolished.** Any person in the employ of a municipality, holding a position in the classified service, at the time that the municipality comes under the provisions of this act, shall, unless his position be abolished, retain same until discharged, reduced, promoted, or transferred in accordance herewith.

History: En. Sec. 81, Ch. 152, L. 1917; re-en. Sec. 5479, R. C. M. 1921.

11-3281. (5480) **Salaries to be withheld until names of appointees or employees are certified.** The director of finance or other public disbursing officer shall not pay any salary or compensation for services to any person holding a position in the classified service, unless the payroll or account for such salary or compensation shall bear the certificate of the board, by its secretary, that the persons named therein have been appointed or employed and are performing service in accordance with the provisions of this act, or the rules established thereunder.

History: En. Sec. 82, Ch. 152, L. 1917; re-en. Sec. 5480, R. C. M. 1921.

Collateral References
Municipal Corporations⇨162 (1).
62 C.J.S. Municipal Corporations § 523.

11-3282. (5481) **Power of board to procure testimony in investigation.** In any investigation conducted by the board it shall have the power to subpoena and require the attendance of witnesses and the production thereby of books and papers pertinent to the investigation, and to administer oaths to such witnesses.

History: En. Sec. 83, Ch. 152, L. 1917; re-en. Sec. 5481, R. C. M. 1921.

Collateral References
Municipal Corporations⇨169.
62 C.J.S. Municipal Corporations § 544.

11-3283. (5482) **Persons in classified service not affected by political or religious opinions or race—political contributions and activity forbidden.** No person in the classified service or seeking admission thereto shall

be appointed, reduced or removed, or in any way favored or discriminated against because of political opinions or affiliations, or because of race, color, or religious beliefs. No officer or employee of the municipality shall directly or indirectly solicit or receive, or be in any manner concerned in soliciting or receiving, any assessments, subscription, or contribution for any political party or political purpose whatever. No person holding a position in the classified service shall take any part in political management or affairs or in political campaigns, further than to cast his vote or to express privately his opinion.

History: En. Sec. 84, Ch. 152, L. 1917; re-en. Sec. 5482, R. C. M. 1921.

Collateral References

Elections⇐317; Municipal Corporations ⇐133, 158.

29 C.J.S. Elections §§ 329, 356; 62 C.J.S. Municipal Corporations §§ 469, 518.

11-3284. (5483) **Penalties for violation of civil service provisions—to be prescribed by board.** The board, subject to the approval of the commission, shall by ordinance determine the penalties for the violations of the civil service provisions of this act.

History: En. Sec. 85, Ch. 152, L. 1917; re-en. Sec. 5483, R. C. M. 1921.

Collateral References

Municipal Corporations⇐174.

62 C.J.S. Municipal Corporations § 549.

11-3285. (5484) **Fixing of salaries and appropriation for civil service.** The salaries of the board and its employees shall be determined by the commission, and a sufficient sum shall be appropriated each year to carry out the civil service provisions of this act.

History: En. Sec. 86, Ch. 152, L. 1917; re-en. Sec. 5484, R. C. M. 1921.

Collateral References

Municipal Corporations⇐162 (1).

62 C.J.S. Municipal Corporations § 523.

11-3286. Officer authorized to execute conveyances of real property—resolution. In all cities operating under the commission-manager form in Montana, the mayor is hereby designated as the proper officer to execute conveyances of real property; however, a majority of the commission may designate the city manager to execute a conveyance. In either case, the authority to act shall be authorized by the passage of a resolution.

History: En. Sec. 1, Ch. 54, L. 1955.

CHAPTER 33

COMMISSION-MANAGER FORM OF GOVERNMENT (continued)

Section 11-3301. Local improvements—assessments—laws governing.
11-3302. Sewer, water, gas, or other connections—notice to property owners—service and contents.
11-3303. Survey and plats of lands subdivided for sale.
11-3304. Effect of recorded map or plat.
11-3305. Director of public service as supervisor of plats—powers and duties.
11-3306. Restriction as to acceptance of streets and alleys by municipality.
11-3307. Care, control, improvement, etc. of public highways and places.
11-3308. Improvement and vacation of streets and highways.
11-3309. Acceptance of dedication of streets and alleys necessary.
11-3310. Vacating or changing names of streets, etc.—proceedings.
11-3311. Appropriation of property for public or municipal purposes.

11-3312. Power of commission to grant rights to occupy streets, highways, etc.—ordinances and resolutions.
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11-3326. Official oath.
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11-3329. Assessment for removal of snow and ice from sidewalks, etc.
11-3330. Abandonment of commission-manager plan—proceedings.
11-3331. Laws continued in force by this chapter.
11-3332. Repealing clause and exception.
11-3333. Effect of organization of communities into single municipal district.
11-3334. Name of new municipal district.
11-3335. Property vests in new municipality—improvements payable by special assessments—unpaid indebtedness of old municipalities.
11-3336. Rental of county buildings—contracts with county commissioners for work—rate of compensation.

11-3301. (5485) **Local improvements—assessments—laws governing.** The commission shall have the power, by ordinance, to provide for the construction, reconstruction, repair, and maintenance by contract, or directly by the employment of labor, of all things in the nature of local improvements, and to provide for the payment of any part of the cost of any such improvement by levying and collecting special assessments upon abutting, adjacent, and contiguous or other specially benefited property, as provided by general law. Whenever the payments for such improvements are to extend over a period of years, and are to be paid for in installments, the proceedings and all things done in connection with such improvements are to be done in strict conformity with the provisions of sections 11-2201 to 11-2243 of this code.

History: En. Sec. 87, Ch. 152, L. 1917; re-en. Sec. 5485, R. C. M. 1921.

Collateral References

Municipal Corporations⇐265.

63 C.J.S. Municipal Corporations §§ 1035, 1036.

11-3302. (5486) **Sewer, water, gas, or other connections—notice to property owners—service and contents.** The director of public service shall have authority to compel the making of sewer, water, gas, and other connections whenever, in view of the contemplated street improvements or as a sanitary regulation, sewer, water, gas, or other connections should in his judgment be constructed. He shall cause written notice of his determination thereof to be given to the owner of each lot or parcel of land to which such connections are to be made, which notice shall state the number and character of connections required. Such notice shall be served by a person, designated by the director of public service, in the manner pro-

vided for the service of summons in civil actions. Nonresidents of the municipality, or persons who cannot be found, may be served by one publication of such notice in a daily newspaper of general circulation in the municipality, if such there be, and if not, by one publication in a weekly newspaper. The notice shall state the time within which such connections shall be constructed; and if they be not constructed within the said time, the work may be done by the municipality, and the cost thereof, together with a penalty of five per cent, assessed against the lots and lands for which such connections are made; provided, that the city commission may in its discretion order and direct that the cost of making any such connection by the municipality may be assessed without penalty and may be paid in annual installments over a period of not to exceed eight years, together with interest thereon not to exceed six per cent per annum, payable annually, on the deferred payments. Said assessments shall be certified and collected as other assessments for street improvements. The actual work of making such connections shall be done under such regulations as are provided for by ordinance.

History: En. Sec. 88, Ch. 152, L. 1917; re-en. Sec. 5486, R. C. M. 1921; amd. Sec. 1, Ch. 45, L. 1939.

Collateral References

Gas⇐13 (1); Municipal Corporations⇐712; Waters and Water Courses⇐210.

38 C.J.S. Gas §§ 24, 30; 64 C.J.S. Municipal Corporations § 1805; 94 C.J.S. Waters § 258.

11-3303. (5487) **Survey and plats of lands subdivided for sale.** Any owner of lots or grounds within the municipality who subdivides or lays them out for sale, must cause to be made an accurate survey and plat thereof, conforming in all things to the provisions of sections 11-601 to 11-614, inclusive, of this code and shall also file with the clerk of the commission a duly certified copy of such plat or plats.

History: En. Sec. 89, Ch. 152, L. 1917; re-en. Sec. 5487, R. C. M. 1921; amd. Sec. 16, Ch. 31, L. 1923.

Collateral References

Municipal Corporations⇐43.

62 C.J.S. Municipal Corporations § 83.

11-3304. (5488) **Effect of recorded map or plat.** The map or plat recorded under the provisions of the foregoing act shall thereupon be sufficient conveyance to vest in the municipality the fee of the parcel of land designated or intended for streets, alleys, ways, commons, or other public uses, to be held in the corporate name in trust to and for the uses and purposes in the instrument set forth, expressed, designated, or intended.

History: En. Sec. 90, Ch. 152, L. 1917; re-en. Sec. 5488, R. C. M. 1921.

Collateral References

Dedication⇐19 (1).

26 C.J.S. Dedication § 22.

11-3305. (5489) **Director of public service as supervisor of plats—powers and duties.** The director of public service shall be the supervisor of plats of the municipality. He shall see that the regulations governing the platting of all lands require all streets and alleys to be of proper width, and to be coterminous with the adjoining streets and alleys, and that all other regulations are conformed with. Whenever he shall deem it expedient to plat any portion of the territory within the corporate limits,

in which the necessary or convenient streets and alleys have not already been accepted by the municipality so as to become public streets or alleys, or when any person plats any land within the corporate limits or within three miles thereof, the supervisor of plats shall, if such plats are in accordance with the regulations prescribed therefor, endorse his written approval thereon. No plat subdividing lands within the corporate limits, or within three miles thereof, shall be entitled to record in the recorder's office of the county without such written approval so endorsed thereon.

History: En. Sec. 91, Ch. 152, L. 1917; re-en. Sec. 5489, R. C. M. 1921.

Collateral References

Municipal Corporations⇐651.
64 C.J.S. Municipal Corporations § 1658.

11-3306. (5490) **Restriction as to acceptance of streets and alleys by municipality.** No streets or alleys, except those laid down on such plat and bearing the approval of the supervisor of plats, as hereinbefore provided, shall subsequently in any way be accepted as public streets or alleys by the municipality, nor shall any public funds be expended in the repair or improvement of streets or alleys subsequently laid out and not on such plat. This restriction shall not apply to a street or alley laid out by the municipality, nor to streets, alleys, or public grounds laid out on a plat by or with the approval of the supervisor of plats.

History: En. Sec. 92, Ch. 152, L. 1917; re-en. Sec. 5490, R. C. M. 1921.

Collateral References

Municipal Corporations⇐651.
64 C.J.S. Municipal Corporations § 1658.

11-3307. (5491) **Care, control, improvement, etc. of public highways and places.** The commission shall provide, by ordinance, for the care, supervision, control, and improvement of public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts within the municipality, and shall cause them to be kept open, in repair, and free from nuisance.

History: En. Sec. 93, Ch. 152, L. 1917; re-en. Sec. 5491, R. C. M. 1921.

11-3308. (5492) **Improvement and vacation of streets and highways.** When it deems it necessary, the commission may cause any street, alley, or public highway to be opened, straightened, altered, diverted, narrowed, widened, or vacated.

History: En. Sec. 94, Ch. 152, L. 1917; re-en. Sec. 5492, R. C. M. 1921.

63 C.J.S. Municipal Corporations § 1042 et seq.; 64 C.J.S. Municipal Corporations § 1664 et seq.

Collateral References

Municipal Corporations⇐269 (2), 655, 657 (1).

11-3309. (5493) **Acceptance of dedication of streets and alleys necessary.** No street or alley hereafter dedicated to public use by the proprietor of ground in the municipality shall be deemed a public street or alley, or under the care or control of the commission, unless the dedication be accepted and confirmed by ordinance passed for such purpose, or unless the provisions hereof relating to subdivisions shall have been complied with.

History: En. Sec. 95, Ch. 152, L. 1917; re-en. Sec. 5493, R. C. M. 1921.

Collateral References
Dedications⇐31.
26 C.J.S. Dedication § 34.

11-3310. (5494) **Vacating or changing names of streets, etc.—proceedings.** The commission in vacating any street or part of a street, or changing the name of any street, may include in one ordinance the change of name or the vacation or narrowing of more than one street, alley, or avenue, but before vacating any street or part thereof, or narrowing any street, the commission shall first pass a resolution declaring its intention so to do. The city manager shall cause notice of such resolution to be served in the manner that service of summons is required to be made in civil actions upon all persons whose property abuts upon the portion of the street affected by the proposed vacation or narrowing, and by publication once in one daily newspaper of general circulation in the municipality, if such there be, and if not, once in one weekly newspaper of like circulation, as to all persons who cannot be personally served. Said notice shall state the time and place at which objection will be heard. Unless fifty-one per cent of the affected property [owners] objects to the proposed vacation or narrowing, the commission may by ordinance declare such vacation or narrowing, and such order of the commission vacating or narrowing a street or alley, which has been dedicated to public use by the proprietor, shall, to the extent that it is vacated or narrowed, operate as a revocation of the acceptance thereof by the commission, but the right of way and easement therein of any lot owner shall not be impaired thereby.

History: En. Sec. 96, Ch. 152, L. 1917; re-en. Sec. 5494, R. C. M. 1921.

Compiler's Note
The compiler has inserted the bracketed word "owners" in the fourth sentence.

Collateral References
Municipal Corporations⇐651½, 655, 657 (5).
64 C.J.S. Municipal Corporations §§ 1654, 1664, 1670.

11-3311. (5495) **Appropriation of property for public or municipal purposes.** Property within the corporate limits of the municipality may be appropriated for any public or municipal purpose, and to the full extent of the authority granted by the constitution of the state, such appropriation shall be made as herein provided. By such appropriation, the municipality may acquire a fee simple title, or any less estate, easement, or use. Appropriations of property outside of the corporate limits of the municipality shall be made according to the requirements of and as provided by general law.

History: En. Sec. 97, Ch. 152, L. 1917; re-en. Sec. 5495, R. C. M. 1921.

Collateral References
Eminent Domain⇐13.
29A C.J.S. Eminent Domain §§ 29, 31.

11-3312. (5496) **Power of commission to grant rights to occupy streets, highways, etc.—ordinances and resolutions.** The commission shall have all powers to grant rights to occupy or use the streets, highways, bridges, or public places in the municipality that now are, or hereafter may be, granted to municipalities by the constitution or laws of Montana. Every ordinance or resolution passed by the commission granting the right to occupy or use streets, highways, or public places of municipalities shall

be complete in the form in which it is finally passed, and remain on file with the commission for inspection by the public for at least one week before the final adoption or passage thereof.

History: En. Sec. 98, Ch. 152, L. 1917; amd. Sec. 3, Ch. 44, L. 1919; re-en. Sec. 5496, R. C. M. 1921.

Collateral References
Municipal Corporations⇐680 (1).
64 C.J.S. Municipal Corporations §§ 1716, 1718 et seq.

11-3313. (5497) **Renewal of franchises.** The commission may, by ordinance, renew any grant for the construction or operation of any utility, at its expiration, subject to petition and referendum as hereinbefore provided.

History: En. Sec. 99, Ch. 152, L. 1917; re-en. Sec. 5497, R. C. M. 1921.

Collateral References
Municipal Corporations⇐285.
63 C.J.S. Municipal Corporations § 1082.

11-3314. (5498) **No exclusive franchise or renewal to be granted.** No exclusive grant or renewal shall ever be granted, and no grant shall be renewed before two years prior to its expiration.

History: En. Sec. 100, Ch. 152, L. 1917; amd. Sec. 5, Ch. 44, L. 1919; re-en. Sec. 5498, R. C. M. 1921.

11-3315. (5499) **Manner of use and occupation of streets and public grounds to be prescribed.** The commission shall, in any ordinance granting or renewing any grant to construct and operate a public utility, prescribe the manner in which the streets and public grounds shall be used and occupied.

History: En. Sec. 101, Ch. 152, L. 1917; amd. Sec. 5, Ch. 44, L. 1919; re-en. Sec. 5499, R. C. M. 1921.

Collateral References
Municipal Corporations⇐682 (1).
64 C.J.S. Municipal Corporations § 1733.

11-3316. (5500) **Extension of public utility subject to referendum.** The commission may, by ordinance, grant to any individual, company, or corporation operating a public utility, the right to extend the appliances and service of such utility outside of the territory as designated by the franchise, subject to petition and referendum as hereinbefore stated. All such extensions shall become part of the aggregate property of the utility, and shall be subject to all the obligations and reserved rights in favor of the municipality applicable to the property of the utility by virtue of the ordinance providing for its construction and operation. The right to use and maintain any such extension shall expire with the original grant of the utility to which the extension was made, or any renewal thereof.

History: En. Sec. 103, Ch. 152, L. 1917; re-en. Sec. 5500, R. C. M. 1921.

Collateral References
Municipal Corporations⇐285.
63 C.J.S. Municipal Corporations § 1082.

11-3317. (5501) **When property owner's consent to public utility necessary.** No consent of the owner of property abutting on any highway or public ground shall be required for the construction, extension, and maintenance or operation of any public utility by original grant or renewal, unless such public utility is of such character that its construction or

operation is an additional burden upon the rights of the property owners in such highways or public grounds.

History: En. Sec. 104, Ch. 152, L. 1917; re-en. Sec. 5501, R. C. M. 1921.

11-3318. (5502) **Fiscal year—estimates of expenditures and revenues—contents.** The fiscal year of the municipality shall commence on the first day of July of each year, and end on the last day of June of each year. The city manager shall submit to the commission an estimate of the expenditures and revenues of the municipal departments for the ensuing year. The estimate shall be compiled from detailed information obtained from the several departments on uniform blanks to be furnished by the city manager. The classification of the expenditures shall be as nearly uniform as possible for the main functional divisions of all departments and shall give in parallel columns the following information:

(a) A detailed estimate of the expenses of conducting each department as submitted by the department;

(b) Expenditures for corresponding items for the last two (2) fiscal years;

(c) Expenditures for the corresponding items for the current fiscal year, including adjustments due to transfers between appropriations plus an estimate of expenditure necessary to complete the current fiscal year;

(d) Amount of supplies and materials on hand at the date of the preparation of the invoice;

(e) Increase or decrease of requests compared with the corresponding appropriations for the current year;

(f) Such other information as is required by the commission or that the city manager may deem advisable to submit;

(g) The recommendation of the city manager as to the amounts to be appropriated with reasons therefor in such detail as the commission may direct.

A sufficient number of copies of such estimate shall be prepared and submitted, that there may be copies on file in the office of the commission for inspection by the public.

History: En. Sec. 105, Ch. 152, L. 1917; re-en. Sec. 5502, R. C. M. 1921; amd. Sec. 17, Ch. 31, L. 1923; amd. Sec. 2, Ch. 173, L. 1925; amd. Sec. 1, Ch. 99, L. 1941.

Collateral References

Municipal Corporations⇐879, 885.

64 C.J.S. Municipal Corporations §§ 1878, 1885.

11-3319. (5503) **Appropriation ordinance—details concerning.** Upon receipt of such estimate, the commission shall prepare an appropriation ordinance in such form as may be prescribed by ordinance or resolution. Before finally acting upon such tentative appropriation, the commission shall fix a time and place for holding public hearing upon the tentative appropriation, and shall give public notice of such hearing. Following the public hearings and before its final passage, the appropriation ordinance shall be published with a parallel comparison with the recommendation of the city manager. The commission shall not pass the appropriation ordinance until ten (10) days after its publication, nor before the second Monday in August.

History: En. Sec. 106, Ch. 152, L. 1917; re-en. Sec. 5503, R. C. M. 1921; amd. Sec. 3, Ch. 173, L. 1925; amd. Sec. 2, Ch. 99, L. 1941.

Collateral References
Municipal Corporations⇐890.
64 C.J.S. Municipal Corporations § 1885 et seq.

11-3320. (5504) **Power of first commission over appropriations already made.** If, at the beginning of the term of office of the first commission elected under the provisions of this act, the appropriations for the expenditures of the municipal government for the current fiscal year have been made, said commission shall have the power by ordinance to revise, repeal, or change said appropriations, and to make additional appropriations.

History: En. Sec. 107, Ch. 152, L. 1917; re-en. Sec. 5504, R. C. M. 1921.

11-3321. (5505) **Transfer of funds.** Upon request of the city manager, the commission may transfer any part of an unencumbered balance of an appropriation to a purpose or object for which the appropriation for the current year has proved insufficient, or may authorize a transfer to be made between items appropriated to the same office or department.

History: En. Sec. 108, Ch. 152, L. 1917; re-en. Sec. 5505, R. C. M. 1921.

Collateral References
Municipal Corporations⇐892.
64 C.J.S. Municipal Corporations § 1889.

11-3322. (5506) **Unexpended appropriations — manner of drawing moneys and incurring obligations.** At the close of each fiscal year, the unencumbered balance of each appropriation shall revert to the respective fund from which it was appropriated, and shall be subject to future appropriations.

Any accruing revenue of the municipality, not appropriated as hereinbefore provided, and any balance at any time remaining after the purpose of the appropriation shall have been satisfied or abandoned, may from time to time be appropriated by the commission to such uses as will not conflict with any uses for which specifically such revenues accrued.

No money shall be drawn from the treasury of the municipality, nor shall any obligation for the expenditure of money be incurred, except pursuant to the appropriation made by the commission.

History: En. Sec. 109, Ch. 152, L. 1917; re-en. Sec. 5506, R. C. M. 1921.

Collateral References
Municipal Corporations⇐891.
64 C.J.S. Municipal Corporations § 1888.

11-3323. (5507) **Fixing salaries and compensation — disposition of fees and moneys.** The commission shall fix by annual salary ordinance the salary or compensation of the city manager, the heads of the departments and its own employees.

The city manager shall fix the number and salaries or compensation of all other officers and employees.

In cities where there is a civil service board as provided for in this act, the salary or compensation so fixed shall be uniform for like service in each grade of the service as the same shall be graded or classified by the city manager in accordance with the rules and regulations adopted by the

civil service board. All such salaries and rates of pay, shall be reported to the secretary of the civil service board. All fees and moneys received or collected by officers and employees shall be paid into the city treasury.

History: En. Sec. 110, Ch. 152, L. 1917; re-en. Sec. 5507, R. C. M. 1921; amd. Sec. 18, Ch. 31, L. 1923; amd. Sec. 4, Ch. 173, L. 1925.

Cross-Reference

Civil service board, sec. 11-3272.

Collateral References

Municipal Corporations⇨162 (1), 220 (1).

62 C.J.S. Municipal Corporations §§ 523, 720 et seq.

11-3324. (5508) **Repealed—Chapter 67, Laws of 1967.**

Repeal

This section (Sec. 111, Ch. 152, L. 1917), relating to the official bonds of clerks and employees, was repealed by Sec. 11, Ch. 67, Laws 1967. For present law, see secs. 6-601 to 6-608.

11-3325. (5509) **Persons holding office at time act takes effect—powers and duties imposed by present laws.** All persons holding office at the time this act goes into effect shall continue in office and the performance of their duties until provision shall have been otherwise made in accordance with the provisions of this act for the performance or discontinuance of the duties of any such office. When such provision shall have been made, the term of any such officer shall expire and the office be abolished.

The powers which are conferred and the duties which are imposed upon any officer, board, or commission or department of the municipality under the laws of the state, shall, if such officer, board, commission, or department is abolished by this act, be thereafter exercised and discharged by the officer, board, commission, or department upon whom are imposed corresponding functions, duties, and powers under the provisions of this act.

History: En. Sec. 112, Ch. 152, L. 1917; re-en. Sec. 5509, R. C. M. 1921.

Collateral References

Municipal Corporations⇨124 (1).

62 C.J.S. Municipal Corporations § 465.

11-3326. (5510) **Official oath.** Every officer of the municipality shall, before entering upon the duties of his office, take and subscribe to an oath or affirmation, to be filed and kept in the office of the commission, that he will in all respects faithfully discharge the duties of his office.

History: En. Sec. 113, Ch. 152, L. 1917; re-en. Sec. 5510, R. C. M. 1921.

11-3327. (5511) **Saving clause as to contracts, work and improvements.** All contracts entered into by the municipality for its benefit, prior to the taking effect of this act, shall continue in full force and effect. All public work begun prior to the taking effect of this act shall be continued and perfected hereunder. Public improvements for which legislative steps shall have been taken under the laws in force at the time this act takes effect may be carried to completion in accordance with the provisions of such laws.

History: En. Sec. 114, Ch. 152, L. 1917; re-en. Sec. 5511, R. C. M. 1921.

11-3328. (5512) **Eight-hour day may be established.** The commission shall have the power to provide, by ordinance, that on any public

work carried on by the municipality, whether done by contract or otherwise, not to exceed eight hours shall constitute a day's work.

History: En. Sec. 115, Ch. 152, L. 1917; re-en. Sec. 5512, R. C. M. 1921.

Collateral References
Labor Relations⇐1379.
56 C.J.S. Master and Servant § 155.

11-3329. (5513) **Assessment for removal of snow and ice from sidewalks, etc.** The commission shall have the power to provide, by ordinance, for assessing against the abutting property the cost of removing from the sidewalks all accumulation of snow and ice, and for assessing against the property the cost of cutting and removing therefrom obnoxious weeds and rubbish.

History: En. Sec. 116, Ch. 152, L. 1917; re-en. Sec. 5513, R. C. M. 1921.

Collateral References
Municipal Corporations⇐676.
64 C.J.S. Municipal Corporations § 1700.

11-3330. (5514) **Abandonment of commission-manager plan — proceedings.** Any municipality which shall have operated for more than two years under the provisions of this act, may abandon such organization hereunder, and accept the provisions of the general law of the state applicable to municipalities of its population.

Upon the petition of not less than twenty-five per cent of the electors of such municipality registered for the last preceding general election, a special election shall be called, at which the following proposition only shall be submitted:

"Shall the (city or town) of (name of city or town) abandon its organization under (name of this act) and become a (city or town) under the general law governing (cities or towns) of like population; or if formerly organized under special charter, shall resume said special charter?"

If the majority of the votes cast at such special election be in favor of such proposition, the officers elected at the next succeeding biennial election shall be those then prescribed by the general laws of the state for municipalities of like population, and upon the qualification of such officers, such municipality shall become a municipality under such general law of the state, but such change shall not in any manner or degree affect the property, rights, or liabilities of any nature of such municipality, but shall merely extend to each change in its form of government.

The sufficiency of such petition shall be determined, the election ordered and conducted, and the results declared, as provided for by the provisions of this act, in so far as the provisions thereof are applicable. Whenever the form of government of a municipality is determined by a vote of the people under the provisions of this section, the same question shall not be submitted again for a period of two years, and any ordinance adopted by the vote of the people shall not be repealed or the same question submitted for a period of two years.

History: En. Sec. 117, Ch. 152, L. 1917; re-en. Sec. 5514, R. C. M. 1921.

Collateral References
Municipal Corporations⇐48 (1).
62 C.J.S. Municipal Corporations § 88 et seq.

11-3331. (5515) **Laws continued in force by this chapter.** Except as otherwise in this act provided, all acts and parts of acts and all laws now in force or hereafter enacted relative to municipal corporations, are hereby continued in full force and effect and shall be considered and construed as not repealed by this act, except in so far as the same may be in conflict or inconsistent with the provisions of this act.

History: En. Sec. 118, Ch. 152, L. 1917; re-en. Sec. 5515, R. C. M. 1921; amd. Sec. 19, Ch. 31, L. 1923.

11-3332. (5516) **Repealing clause and exception.** All laws and parts of laws in conflict herewith are hereby repealed; provided, however, that this act shall not repeal or modify any of the provisions of an act approved March 4, 1913, entitled, An act making the board of railroad commissioners of the state of Montana ex officio a public service commission for the regulation and control of certain public utilities, etc., or any amendment or amendments of said act, or section 70-301 of the codes, and neither shall this act in any manner curtail or impair the power or authority of said public service commission and any order made, action taken, or regulation provided, by said commission shall supersede and nullify any order, regulation, ordinance or other action authorized by this act in conflict with any such order, regulation, or action, of said public service commission; provided, that the annual report relating to the operation of any public utility owned by any municipality operating under the provisions of this act, to be made to said public service commission, shall conform to the fiscal year of such city or town as established by this act.

History: En. Sec. 119, Ch. 152, L. 1917; re-en. Sec. 5516, R. C. M. 1921; amd. Sec. 20, Ch. 31, L. 1923.

Compiler's Note

The act approved March 4, 1913, referred to in this section, is Ch. 52, Laws 1913, compiled as secs. 70-101 to 70-135.

Collateral References

Public Service Commissions⇦2; Statutes ⇦157.

73 C.J.S. Public Utilities § 33; 82 C.J.S. Statutes § 285.

11-3333. (5517) **Effect of organization of communities into single municipal district.** Whenever any group of communities shall become a single municipal district under the provisions of this law, the commissioners elected at the first election shall have the same functions and authority, and municipal procedure in all respects shall be the same as is provided in this law where single communities, cities, or towns adopt the commission-manager form of government, and the terms of all municipal officers in any prior city or town which may be included in such new municipal district shall in like manner cease and terminate as soon as the commissioners shall by resolution so declare, and the corporate functions and existence of any such prior municipal corporation may in like manner be terminated by said commissioners when the need for the further existence of such prior corporation shall be at an end.

History: En. Sec. 121, Ch. 152, L. 1917 added by Sec. 6, Ch. 44, L. 1919; re-en. Sec. 5517, R. C. M. 1921.

Collateral References

Municipal Corporations⇦36 (7).

62 C.J.S. Municipal Corporations § 70.

11-3334. (5518) **Name of new municipal district.** Whenever any group of communities, including one or more incorporated cities or towns, shall become a single municipal district under this law, such municipal district shall bear the same name as the principal incorporated city or town in such district.

History: En. Sec. 122, Ch. 152, L. 1917 added by Sec. 6, Ch. 44, L. 1919; re-en. Sec. 5518, R. C. M. 1921.

Collateral References
Municipal Corporations⇐21.
62 C.J.S. Municipal Corporations § 35.

11-3335. (5519) **Property vests in new municipality—improvements payable by special assessments—unpaid indebtedness of old municipalities.** Whenever any group of communities, including one or more incorporated cities or towns, shall become a single municipal district under this law, the corporate property of each such city or town shall become the property of the new municipality, but improvements paid for in whole or in part by special assessments upon abutting property within special improvement districts shall not be deemed municipal property within the meaning of this law, to the extent of payments so made. If such prior city or town shall have an unpaid indebtedness, the commissioners of said new municipality elected at the first municipal election shall inventory and appraise or cause to be inventoried and appraised, all of such property, and if the amount of the indebtedness of such prior city or town shall exceed the inventory value of the property surrendered to the new municipality by such prior city or town, then the excess of such indebtedness over the inventory value of said property shall be a charge only against the taxable property within the limits of such prior city or town, and shall be paid by levy upon such property alone.

History: En. Sec. 123, Ch. 152, L. 1917; added by Sec. 6, Ch. 44, L. 1919; re-en. Sec. 5519, R. C. M. 1921.

Collateral References
Municipal Corporations⇐36 (2), (3).
62 C.J.S. Municipal Corporations § 70.

11-3336. (5520) **Rental of county buildings—contracts with county commissioners for work—rate of compensation.** Whenever any city organized under this act includes the county seat of the county in which it is situated, any unused space in the county buildings in such city may be rented to the city commissioners for municipal use by the board of county commissioners for such rent as shall represent an income of not more than six per cent upon the investment in such buildings proportionate to the space rented. Such commissioners may also contract with the board of county commissioners for the performance by county officials or employees of any kind of municipal work which can be feasibly performed by them. The compensation for such work shall be based upon additional cost to the county of its performance, and such compensation shall be paid into the general fund of such county unless otherwise provided by law.

History: En. Sec. 124, Ch. 152, L. 1917 added by Sec. 6, Ch. 44, L. 1919; re-en. Sec. 5520, R. C. M. 1921.

Collateral References
Municipal Corporations⇐224, 228.
63 C.J.S. Municipal Corporations §§ 957, 982.

CHAPTER 34

CITY AND COUNTY CONSOLIDATED GOVERNMENT

Section 11-3401. Consolidated county and city government authorized.
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11-3401. (5520.1) **Consolidated county and city government authorized.** The separate corporate existence and government of any county and of each and every city and town therein may be abandoned and terminated and such county and each and all of the cities and towns therein may be consolidated and merged into one municipal corporation and government under this act by proceeding as hereinafter provided.

History: En. Sec. 1, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⇦39.

62 C.J.S. Municipal Corporations § 85 et seq.

11-3402. (5520.2) **Petition — signatures required.** The question of the abandonment and termination of the separate corporate existence and government of a county and of each and every city and town therein and the consolidation and merging of the existence and government of such county and each and all of the cities and towns therein into one municipal corporation and government, under the provisions of this act, shall be submitted to the qualified electors of such county if a petition be filed in the office of the county clerk of such county, signed by at least twenty per centum (20%) of the electors of said county whose names appear on the official register of voters of the county on the date of the filing of such petition, requesting that such question be submitted to the qualified electors of the county.

History: En. Sec. 2, Ch. 121, L. 1923.

Determination of Sufficiency of Petition

The question of the sufficiency of a petition, filed under this section, requesting the calling of a county election submitting the proposition of the consolidation of the county and all cities and towns into one municipal corporation, is to be determined by the county clerk and not the board of county commissioners, and when he certifies the petition as sufficient it is the clear duty of the board to order an election, unless the petition is void on its face. State ex rel. Freeze v. Taylor, 90 M 439, 441, 4 P 2d 479.

11-3403. (5520.3) **Form of petition—certificate of county clerk—special election—notice.** Such petition shall be substantially in the form and shall be signed, verified and filed in the manner prescribed in this act for initiative, referendum and recall petitions, and shall designate therein the name by which such consolidated government is to be known, which must be either that of the county or of some one of the cities or towns therein. If the county clerk shall find that such petition, or amended petition, so filed, is signed by the required number of qualified electors he shall so certify to the board of county commissioners of such county at their next regular meeting, and such board shall thereupon, and within ten days after receiving the clerk's certificate, order a special election to

be held at which election such question shall be submitted to the qualified electors of the county. Such order shall specify the time when such election shall be held, which shall be not less than ninety nor more than one hundred and twenty days from and after the day when such order is made, and the board of county commissioners shall immediately upon making such order issue a proclamation setting forth the purpose for which such special election is held and the date of holding the same, which proclamation must be published and posted in the manner prescribed by section 23-105.

History: En. Sec. 3, Ch. 121, L. 1923.

11-3404. (5520.4) **Form of ballot.** At such election the ballots to be used shall be printed on plain white paper, shall conform as nearly as possible to the ballots used on general elections, and shall have printed thereon the following.

"Shall the corporate existence and government of the County of .... and of each and every city and town therein be consolidated and merged into one municipal corporation and government under the provisions of Chapter (giving the number of this act), Acts of the Eighteenth Legislative Assembly of the State of Montana, to be known and designated as 'City and County of .....?' "

☐ YES.

☐ NO.

Such election shall be conducted, vote returned and canvassed and result declared in the same manner as provided by law in respect to general elections.

History: En. Sec. 4, Ch. 121, L. 1923.

11-3405. (5520.5) **Special election of commission — proclamation— nominations—conduct of election.** If the majority of the votes cast at such election shall be in favor of such consolidation and merging, the board of county commissioners of such county must, within two weeks after such election returns have been canvassed, order a special election to be held for the purpose of electing the number of members of the commission to which such consolidated municipality shall be entitled, which order shall specify the time when such election shall be held, which shall be not less than ninety nor more than one hundred and twenty days from and after the day when such order is made, and the board of county commissioners, immediately upon making such order, shall issue a proclamation setting forth the purpose for which such special election is held and the date of holding the same, which proclamation must be published and posted in the manner prescribed by section 23-105, provided, however, that if any general election is to be held in such county after three months but within six months from the date of the making of such order then such order shall require such special election to be held at the same time as such general election. No primary election shall be held for the purpose of nominating candidates for members of the commission hereinafter provided for, to be voted for at such special election, but such candidates shall be nominated directly by petition which shall be in sub-

stantially the same form and be signed by the same number of signers as hereinafter required for primary nominating petitions. Such election shall be conducted, vote returned and canvassed and result declared in the same manner as provided by law in respect to general elections.

History: En. Sec. 5, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⇐129.

11-3406. (5520.6) **Powers of consolidated municipalities.** The inhabitants of every consolidated municipality organized under the provisions of this act, as its limits are at the time of such organization, or as they may be thereafter established as provided by law, shall be a body politic and corporate under the designation and name as adopted at the election providing for such consolidation and merging, and as such shall have perpetual succession; may use a corporate seal; may sue and be sued; may contract and be contracted with; may acquire property within or without the boundaries of the municipality for any municipal purpose, in fee simple, or lesser interest or estate, by purchase, gift, devise, appropriation, lease or lease with privilege of purchase, and may sell, lease, hold, manage and control such property as the interest of the municipality may require; levy and collect such taxes as are authorized by this act or by the general laws of the state; and, except as otherwise provided in this act, such municipality shall have and may exercise all other powers that are now or hereafter may be conferred on counties, cities and towns by the laws of this state. All powers of the municipality, whether expressed or implied, shall be exercised and enforced in the manner prescribed in this act, or in the general laws of the state, or when not so prescribed, then as may be prescribed by ordinance or resolution of the commission.

History: En. Sec. 6, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⇐39, 57.
62 C.J.S. Municipal Corporations §§ 85 et seq., 106.

11-3407. (5520.7) **Commissioners—number — term — vacancies — qualifications.** Except as otherwise provided in this act all powers of the consolidated municipality shall be vested in a commission, and for the purpose of determining the number of members composing such commission, consolidated municipalities organized under the provisions of this act shall be classified and all of the provisions of sections 16-2419 and 16-2420, governing and controlling the classification of such consolidated municipalities. In consolidated municipalities of the first class such commission shall consist of seven members; in consolidated municipalities of the second, third and four classes of five members; and in consolidated municipalities of the fifth, sixth, seventh and eighth classes of three members. The term of office of members of the commission shall be four years and shall commence on the first day of July following their election; provided, however, that the terms of office of the members first elected at such special election shall commence on the first day of the third month following their election, and the terms of office of a majority of such members first elected, to be determined by lot, shall expire on the last day

of June in the first year following their election, and the terms of the remaining members first elected shall expire on the last day of June in the third year following their election. If a vacancy occur in the commission, except as the result of a recall election, some eligible person shall be chosen by a majority vote of the remaining members to fill the place for the unexpired term. Members of the commission must be qualified electors of the consolidated municipality and must be the owners of real estate situated therein to the value of not less than one thousand dollars, and shall not hold any other public office except that of notary public or member of the state militia. A member of the commission ceasing to possess any of the qualifications specified in this section shall immediately forfeit his office.

History: En. Sec. 7, Ch. 121, L. 1923.

Compiler's Note

Section 16-2419 lists classes of counties through the seventh class.

Collateral References

Municipal Corporations⚖22, 80, 138, 149 (1), (2).

62 C.J.S. Municipal Corporations §§ 36, 385 et seq., 476 et seq., 495 et seq.

37 Am. Jur. 685, Municipal Corporations, § 72 et seq.

Commission and other modern forms of municipal government as affecting liability of municipality for torts. 30 ALR 473.

Constitutionality of city manager or commission form of municipal government. 67 ALR 737.

11-3408. (5220.8) **Organization of commission — meetings — notice of meetings.** At 2 o'clock p. m. on the last day of June following a regular municipal election the commission shall meet at the courthouse in the consolidated municipality and the newly elected members shall assume the duties of office; provided, however, that the first meeting of such commission, after the special election at which the first members of the commission are elected, shall be held at 2 o'clock p. m. on the first day of the third month following such special election, and at such meeting the members of such commission shall determine by lot the members whose terms will expire on the last day of June in the first year following such special election and the members whose terms will expire on the first day of July in the third year following such election. Thereafter the commission shall meet at such times as may be prescribed by ordinance or resolution, but not less frequently than once in each month. Special meetings shall be called by the clerk of the commission upon written request of the president, the manager, or a majority of the members of the commission. Any such notice shall state the subject to be considered at the meeting and no other subject shall be considered at such meeting. All meetings of the commission, and of committees thereof, shall be open to the public and the rules of the commission shall provide that citizens of the municipality shall have a reasonable opportunity to be heard at any such meeting in regard to any matter considered thereat.

History: En. Sec. 8, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⚖86, 87.

62 C.J.S. Municipal Corporations § 391 et seq.

11-3409. (5520.9) **Rules of commission — expelling members.** The commission shall determine its own rules and order of business and shall

keep a journal of its proceedings. It shall have power to compel the attendance of absent members, may punish its members for disorderly behavior and, by vote of not less than two-thirds of its members, may expel a member for disorderly conduct or the repeated violation of its rules; but no member shall be expelled unless notified of the charge against him and given an opportunity to be heard.

History: En. Sec. 9, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⇐92.

62 C.J.S. Municipal Corporations § 400.

11-3410. (5520.10) **Officers of commission — powers of president—vice-president.** At the first meeting of the commission following the special election at which the members thereof are first elected and thereafter at its meeting on the first day of July following each general election at which members of the commission are elected, the commission shall choose one of its members as president and another as vice-president. The president shall preside at meetings of the commission and shall exercise the powers and perform the duties conferred and imposed by this act and the ordinances of the municipality. He shall be recognized as the official head of the municipality for all ceremonial purposes, by the courts for serving civil processes, and by the governor for purposes of military law. In time of public danger or emergency he shall, if authorized by vote of the commission, take command of the police, maintain order and enforce the law. If a vacancy occur in the office of president, or in case of his absence or disability, the vice-president shall act as president for the unexpired term or during the continuance of the absence or disability.

History: En. Sec. 10, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⇐83.

62 C.J.S. Municipal Corporations § 389.

11-3411. (5520.11) **Director of finance—powers.** The director of finance shall be ex officio clerk of the commission and shall either in person or by deputy keep the records of the commission and perform such other duties as may be required by this act or by the commission.

History: En. Sec. 11, Ch. 121, L. 1923.

11-3412. (5520.12) **Quorum of commission—voting.** A majority of the members elected to the commission shall constitute a quorum to do business, but a less number may adjourn from time to time and compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. The affirmative vote of a majority of the members elected to the commission shall be necessary to adopt any ordinance, resolution, order or vote; except that a vote to adjourn, or regarding the attendance of absent members may be adopted by a majority of the members present.

History: En. Sec. 12, Ch. 121, L. 1923.

62 C.J.S. Municipal Corporations §§ 399, 404.

Collateral References

Municipal Corporations⇐90, 97.

11-3413. (5520.13) **Compensation of commission — maximum — penalty for absences—mileage.** The commission may by ordinance provide

compensation for its members, but the total amount and manner of compensation may not exceed the maximum sum prescribed by law for aldermen of cities of the first class.

Absence from all regular meetings for a period of ninety (90) days shall operate to vacate the seat of a member unless such absence be authorized by the commission. In addition to any compensation authorized by this section each member of the commission shall receive the same sum prescribed by law for county commissioners per mile for any distance, in excess of ten (10) miles, necessarily traveled in going from and returning to his residence because of attendance upon a regular, or regularly called meeting of the commission or in travel in the county undertaken in performance of official duties.

History: En. Sec. 13, Ch. 121, L. 1923; amd. Sec. 1, Ch. 79, L. 1967.

Collateral References

Municipal Corporations⇐162 (1).

62 C.J.S. Municipal Corporations § 522 et seq.

11-3414. (5520.14) **Ordinances, enacting of—form of enacting clause.** Ordinances and resolutions shall be introduced in the commission only in written or printed form. All ordinances or resolutions, except ordinances making appropriations, shall be confined to one subject which shall be clearly expressed in the title, except as provided in the next succeeding section of this act. Ordinances making appropriations shall be confined to the subject of appropriations. No ordinance shall be passed until it has been read on three separate days, unless the requirement of reading on three separate days has been dispensed with by a vote of not less than two-thirds of the members of the commission. The final reading shall be in full unless a written or printed copy of the measure shall have been furnished to each member of the commission prior to such reading.

The enacting clause of all ordinances passed by the commission shall be "Be it ordained by the city and county of .....," and the enacting clause of all ordinances submitted by the initiative shall be "Be it ordained by the people of the city and county of ....."

History: En. Sec. 14, Ch. 121, L. 1923.

62 C.J.S. Municipal Corporations §§ 411 et seq., 416 et seq.

Collateral References

Municipal Corporations⇐105, 106 (1), (2).

11-3415. (5520.15) **Revision and codification of ordinances—effect as evidence.** Ordinances may be revised, codified, rearranged and published in book form under appropriate titles, chapters and sections and such revision and codification may be made in one ordinance containing one or more subjects. The publication of such revision and codification in book form as aforesaid shall be held to be a sufficient publication of the ordinance or several ordinances contained in such revision and codification. Any such publication of a revision or codification of ordinances in book form shall contain a certificate of the president and clerk of the correctness of such revision, codification and publication; and such book so published shall be received in evidence in any court for the purpose of proving the ordinance or ordinances therein contained, the same and for the

same purpose as the original book, ordinances, minutes or journals would be received.

History: En. Sec. 15, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⇐110.

62 C.J.S. Municipal Corporations § 427.

11-3416. (5520.16) **Amending ordinances.** No ordinance, resolution or section thereof shall be revised or amended unless the new ordinance or resolution contains the entire ordinance, resolution or section thereof as revised or amended.

History: En. Sec. 16, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⇐114.

62 C.J.S. Municipal Corporations § 434.

11-3417. (5520.17) **Effective date of ordinances—emergencies—submission to electors of measures concerning franchises or special privileges.** Ordinances making the annual tax levy, ordinances and resolutions providing for local improvements and assessments, and emergency measures shall take effect at the time indicated therein. All other ordinances and resolutions enacted by the commission shall be in effect from and after thirty days from the date of their passage. Ordinances adopted by the electors shall take effect at the time fixed therein, or, if no time is specified, thirty days after the adoption thereof. An emergency measure is an ordinance or resolution to provide for the immediate preservation of the public peace, health or safety, in which the emergency claimed is set forth and defined in a preamble thereto. The affirmative vote of at least two-thirds of the members of the commission shall be required to pass an emergency ordinance or resolution. No measure making or amending a grant, renewal or extension of a franchise or other special privilege shall ever be passed without first submitting the application therefor to the resident freeholders in the manner provided by sections 11-1207 and 11-1208.

History: En. Sec. 17, Ch. 121, L. 1923.

62 C.J.S. Municipal Corporations §§ 442, 449 et seq.

Collateral References

Municipal Corporations⇐108, 120.

11-3418. (5520.18) **Recording and publishing of resolutions and ordinances.** Every ordinance or resolution upon its final passage shall be recorded in a book kept for that purpose and shall be authenticated by the signatures of the president and clerk. Within ten days after its final passage each ordinance or resolution shall be published at least once in such manner as the commission may by ordinance provide.

History: En. Sec. 18, Ch. 121, L. 1923.

11-3419. (5520.19) **Initiative measures—petition.** Any proposed ordinance, except an ordinance making a tax levy or appropriation, may be submitted to the commission by petition signed by ten per centum (10%) of the qualified electors of the municipality whose names appear on the register of voters on the date when the proposed ordinance is submitted to the commission. All petition papers circulated with respect to

any proposed ordinance shall be uniform in character and shall contain the proposed ordinance in full.

History: En. Sec. 19, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⇐108.3.

62 C.J.S. Municipal Corporations § 456.

37 Am. Jur. 841, Municipal Corporations, § 204 et seq.

Character of subject matter of ordinance within operation of initiative and referendum provisions. 122 ALR 769.

Construction and application of constitutional or statutory provisions expressly excepting certain laws from referendum. 146 ALR 284 and 100 ALR 2d 314.

Power of legislative body to amend, repeal, or abrogate initiative or referendum measure to enact measure defeated on referendum. 33 ALR 2d 1118.

11-3420. (5520.20) **Action of commission on initiative petitions.** If an initiative petition, or amended petition be found sufficient by the clerk he shall so certify and shall submit the ordinance therein set forth to the commission at its next meeting, and the commission shall at once read and refer it to an appropriate committee, which may be a committee of the whole. Provision shall be made for public hearings upon the proposed ordinance before the committee to which it is referred. Thereafter the committee shall report the ordinance to the commission, with its recommendations thereon, not later than sixty days after the date on which such ordinance was submitted to the commission by the clerk. Upon receiving the ordinance from the committee the commission shall proceed at once to consider it and shall take final action thereon within thirty days from the date of such committee report.

History: En. Sec. 20, Ch. 121, L. 1923.

11-3421. (5520.21) **Submission of initiative measure to electors.** If the commission fail to pass an ordinance proposed by initiative petition, or pass it in a form different from that set forth in the petition therefor, the committee of the petitioners hereinafter provided for may require that it be submitted to a vote of the electors either in its original form or with any change or amendment presented in writing either at a public hearing before the committee to which the proposed ordinance was referred or during the consideration thereof by the commission. If the committee of petitioners require the submission of a proposed ordinance to a vote of the electors they shall certify that fact to the clerk and file in his office a certified copy of the ordinance, in the form in which it is to be submitted, within ten days after final action on such ordinance by the commission.

History: En. Sec. 21, Ch. 121, L. 1923.

11-3422. (5520.22) **Time for submitting to electors—adoption on favorable vote.** Upon receipt of the certified copy of a proposed ordinance from the committee of the petitioners the clerk shall certify the fact to the commission at its next regular meeting. If a municipal election is to be held within six months but more than ninety days after the receipt of the clerk's certificate by the commission, such proposed ordinance shall be submitted to a vote of the electors at such election. If no such election is to be held within the time aforesaid the commission may provide for submitting the proposed ordinance to the electors at a special election to be held not sooner than ninety days after receipt of the clerk's certificate.

If no municipal election be held within six months as aforesaid, and the commission does not provide for a special election, the proposed ordinance shall be submitted to the electors at the first election held after the expiration of such six months. If, when submitted to the electors, a majority of those voting on a proposed ordinance shall vote in favor thereof, it shall thereupon be an ordinance of the municipality.

History: En. Sec. 22, Ch. 121, L. 1923.

11-3423. (5520.23) **Effective date of initiative measure.** When an ordinance proposed by initiative petition is passed by the commission in a changed or amended form, and the committee of the petitioners require that such proposed ordinance be submitted to a vote of the electors as hereinbefore provided, the ordinance as passed by the commission shall not take effect until after such vote, and, if the proposed ordinance so submitted, be approved by a majority of the electors voting thereon, the ordinance as passed by the commission shall be deemed repealed.

History: En. Sec. 23, Ch. 121, L. 1923.

11-3424. (5520.24) **Repealing ordinances may be initiated—publication, amending and repealing of initiative measures by commission.** Proposed ordinances for repealing any existing ordinance or ordinances, in whole or in part, may be submitted to the commission as provided in the preceding sections for initiating ordinances. Initiated ordinances adopted by the electors shall be published, and may be amended or repealed by the commission, as in the case of other ordinances.

History: En. Sec. 24, Ch. 121, L. 1923.

11-3425. (5520.25) **Referendum—petition.** The electors shall have power to approve or reject at the polls any ordinance passed by the commission, except an ordinance making a tax levy or an emergency measure, such power being known as the referendum. Ordinances submitted to the commission and passed by the commission without change, or passed in an amended form and not required by the committee of the petitioners to be submitted to a vote of the electors, shall be subject to the referendum in the same manner as other ordinances. If, within thirty days after the final passage of an ordinance, a petition signed by ten per centum (10%) of the qualified electors whose names appear on the register of voters on the date when such petition is filed, shall be filed with the clerk requesting that the ordinance, or any specified part thereof, be either repealed or submitted to a vote of the electors, it shall not become operative until the steps indicated herein have been taken. Referendum petitions shall contain the text of the ordinance, or part thereof, the repeal of which is sought.

History: En. Sec. 25, Ch. 121, L. 1923.

11-3426. (5520.26) **Reconsideration of measure by commission—reference to electors.** If a referendum petition, or amended petition, be found sufficient by the clerk he shall certify that fact to the commission at its next regular meeting and the ordinance or part thereof set forth in the petition shall not go into effect, or further action thereunder shall be suspended if it shall have gone into effect, until approved by the electors

as hereinafter provided. Upon receipt of the clerk's certificate the commission shall proceed to reconsider the ordinance or part thereof and its final vote upon such reconsideration shall be upon the question "Shall the ordinance (or part of the ordinance) set forth in the referendum petition be repealed?" If upon such reconsideration the ordinance, or part thereof, be not repealed it shall be submitted to the electors at the next municipal election held not less than ninety days after such final vote by the commission. The commission by vote of not less than two-thirds of its members may submit the ordinance, or part thereof, to the electors at a special election to be held not sooner than the time aforesaid. If when submitted to the electors any ordinance, or part thereof, be not approved by a majority of those voting thereon it shall be deemed repealed.

History: En. Sec. 26, Ch. 121, L. 1923.

11-3427. (5520.27) **Voting on initiative or referendum measures—ballots.** Ordinances, or parts thereof, submitted to vote of the electors in accordance with the initiative and referendum provisions of this act shall be submitted by ballot title which shall be prepared in all cases by the director of law. The ballot title may be distinct from the legal title of any such proposed or referred ordinance and shall be a clear, concise statement, without argument or prejudice, descriptive of the substance of such ordinance or part thereof. The ballot used in voting upon any ordinance, or part thereof, shall have below the ballot title the two following propositions, one above the other, in the order indicated: "For the ordinance" and "Against the ordinance." Immediately at the left of each proposition there shall be a square in which by making a cross mark (X) the elector may vote for or against the ordinance or part thereof. Any number of ordinances, or parts thereof, may be voted upon at the same election and may be submitted on the same ballot, but the ballot used for voting thereon shall be for that purpose only.

History: En. Sec. 27, Ch. 121, L. 1923.

11-3428. (5520.28) **Preliminary acts authorized prior to submission of ordinance to electors.** In case a petition be filed requiring that an ordinance passed by the commission providing for the expenditure of money, a bond issue, or a public improvement be submitted to a vote of the electors, all steps preliminary to such actual expenditure, actual issuance of bonds, or actual execution of the contract for such improvement, may be taken prior to the election.

History: En. Sec. 28, Ch. 121, L. 1923.

11-3429. (5520.29) **Petitions for initiative, referendum or recall—signatures—affidavit.** The signatures to initiative, referendum or recall petitions need not all be appended to one paper, but to each separate petition paper there shall be attached an affidavit of the circulator thereof as provided by this section. Each signer of any such petition paper shall sign his name in ink or indelible pencil and shall indicate after his name his place of residence by street and number, or other description sufficient to identify the place. There shall appear on each petition paper the names and addresses of five electors of the municipality, who, as a committee of

the petitioners, shall be regarded as responsible for the circulation and filing of the petition. The affidavit attached to the petition paper shall be as follows:

State of Montana, city and county of .....,
....., being duly sworn, deposes and says that he is the circulator of the foregoing paper and that the signatures appended thereto were made in his presence and are the genuine signatures of the persons whose names they purport to be.

Signed.....

Subscribed and sworn to before me this ..... day of ....., 19....

.....
Notary public for the state of Montana.
Residing at ....., Montana.
My commission expires .....

History: En. Sec. 29, Ch. 121, L. 1923.

Application to Petitions for Enactment of Ordinances

The provision of this section that each petition paper shall bear the names and addresses of five electors of the municipality who, as a committee of the petitioners, shall be regarded as responsible for the circulation and filing of the petition, has reference to petitions for the enactment of ordinances under the referendum power after the new municipality has been created, and not to the initial petition looking to the creation of the consolidated government. State ex rel. Freeze v. Taylor, 90 M 439, 441, 4 P 2d 479.

Use of Ditto Marks

The use of the ditto mark to indicate that the signer of an initiative or referendum petition has his residence in the same city or voting precinct as the signer immediately next preceding his signature is a sufficient compliance with the provisions of this section requiring an elector to indicate after his name his place of residence, or other description sufficient to identify the place, particularly where there is no allegation that anyone was or could be misled by the addresses given. State ex rel. Freeze v. Taylor, 90 M 439, 4 P 2d 479.

Collateral References

Municipal Corporations⇐108.3, 159 (1).
62 C.J.S. Municipal Corporations §§ 456, 510 et seq.

11-3430. (5520.30) **Petitions, assembling of papers comprising—clerk's certificate.** All petition papers comprising an initiative, referendum or recall petition shall be assembled and filed with the clerk as one instrument. Within ten days after a petition is filed the clerk shall determine whether it is signed by a sufficient number of electors and shall attach thereto a certificate showing the result of his examination. If he shall certify that the petition is insufficient he shall set forth in his certificate the particulars in which it is defective and shall at once notify the committee of the petitioners of his findings.

History: En. Sec. 30, Ch. 121, L. 1923.

11-3431. (5520.31) **Petitions—amendments—filing new petition not precluded by finding of insufficiency.** An initiative, referendum or recall petition may be amended at any time within ten days after the making of a certificate of insufficiency by the clerk, by filing a supplementary petition upon additional papers signed and filed as provided in case of an original petition. The clerk shall, within five days after such amendment is filed, make examination of the amended petition and, if his certificate

shall show the petition still to be insufficient, he shall file it in his office and notify the committee of the petitioners of his findings and no further action shall be had on such insufficient petition. The finding of the insufficiency of a petition shall not prejudice the filing of a new petition for the same purpose.

History: En. Sec. 31, Ch. 121, L. 1923.

11-3432. (5520.32) **Manager — appointment — powers — removal and suspension—compensation.** The commission shall appoint a manager, who shall be the chief executive officer of the municipality. He shall be chosen by the commission solely on the basis of his executive and administrative qualifications and need not when appointed be a resident of the municipality. No member of the commission shall, during the time for which elected, be chosen manager. The manager shall not be appointed for a definite term, but shall be removable at the pleasure of the commission. In case the commission determine to remove the manager he shall, if he so demand, be given a written statement of the reason alleged for the proposed removal and the right to be heard thereon at a public meeting of the commission prior to the date on which his final removal shall take effect, but pending and during such hearing the commission may suspend him from office. The action of the commission in suspending or removing the manager shall be final, it being the intention of this act to vest all authority and fix all responsibility for any such suspension or removal in the commission. In case of the absence or disability of the manager the commission may designate some responsible person to perform the duties of the office. The manager shall receive such compensation as may be fixed by the commission.

History: En. Sec. 32, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⇐131, 138, 149 (2), 159 (1).

62 C.J.S. Municipal Corporations §§ 473, 476 et seq., 495 et seq., 510 et seq.

37 Am. Jur. 688, Municipal Corporations, § 75.

Liability for acts or omissions of city manager. 38 ALR 1412.

11-3433. (5520.33) **Manager—responsibility—appointment of subordinate officers—qualifications and term of appointees.** The manager shall be responsible to the commission for the proper administration of the affairs of the municipality placed in his charge and to that end shall appoint all officers and employees in the administrative service of the municipality, except as otherwise provided in this act and except as he may authorize the head of a department or office, responsible to him to appoint subordinates in such department or office. Appointments by or under the authority of the manager shall be confined to citizens of the municipality, except in such specific cases as the commission may suspend this requirement, and shall be on the basis of the ability, training and experience of the appointees in the work which they are to perform. All such appointments shall be without definite term unless for temporary service not to exceed sixty days.

History: En. Sec. 33, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⇐168.

62 C.J.S. Municipal Corporations § 543.

11-3434. (5520.34) **Removal of appointees—notice—hearing—decision of manager as final.** Any officer or employee of the municipality appointed by the manager, or upon his authorization, may be laid off, suspended or removed from office or employment either by the manager or the officer by whom appointed. Verbal or written notice of layoff, suspension or removal given to an officer or employee, or written notice left at or mailed to his usual place of residence, shall be sufficient to put any such layoff, suspension, or removal into effect unless the person so notified shall, within five days of such notice, demand a written statement of reasons therefor and the right to be heard thereon before the manager. Upon such demand the officer making the layoff, suspension or removal shall supply the person notified thereof with a written statement of the reasons therefor and the manager shall fix a time and place for the public hearing. Following the public hearing the manager shall either confirm the layoff, suspension or removal as specified in the notice, reinstate the person so notified in the service, or make such other disposition of the matter as, in his opinion, the good of the service may require. The decision of the manager in any such case shall be final, and there shall be no appeal therefrom to any officer, body or court whatsoever. A copy of the written statement of reasons given for any layoff, suspension or removal, and a copy of any written reply thereto by the officer or employee involved, together with a copy of the decision of the manager, shall be filed as a public record in the office of the clerk.

History: En. Sec. 34, Ch. 121, L. 1923.

62 C.J.S. Municipal Corporations §§ 510 et seq., 734 et seq.

Collateral References

Municipal Corporations⇐159 (1), 218 (8).

11-3435. (5520.35) **Commissioners not to direct or request appointment or interfere with administrative service—penalty.** Neither the commission nor any of its committees or members shall direct or request the appointment of any person to, or his removal from, office or employment by the manager or any of his subordinates, or in any manner take part in the appointment or removal of officers and employees in the administrative service of the municipality. Except for the purpose of inquiry, the commission and its members shall deal with that portion of the administrative service for which the manager is responsible solely through the manager, and neither the commission nor any member thereof shall give orders to any subordinate of the manager either publicly or privately. Any violation of the provisions of this section by a member of the commission shall be a misdemeanor, conviction of which shall immediately forfeit the office of the member so convicted.

History: En. Sec. 35, Ch. 121, L. 1923.

62 C.J.S. Municipal Corporations §§ 106, 153.

Collateral References

Municipal Corporations⇐60.

11-3436. (5520.36) **Manager—general duties.** It shall be the duty of the manager to act as chief conservator of the peace within the municipality; to supervise the administration of the affairs of the municipality; to see that the ordinances of the municipality and the laws of the state

are enforced; to make such recommendations to the commission concerning the affairs of the municipality as may seem to him desirable; to keep the commission advised of the financial conditions and future needs of the municipality; to prepare and submit to the commission such reports as may be required by that body; and to perform such other duties as may be prescribed by this act or be required of him by ordinance or resolution of the commission.

History: En. Sec. 36, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⇐168.
62 C.J.S. Municipal Corporations § 543.

11-3437. (5520.37) **Manager and directors may attend commission meetings—discussions.** The manager, the directors of all departments, and all other officers of the municipality shall be entitled to be present at all sessions of the commission. The manager shall have the right to take part in the discussion of all matters coming before the commission and the directors and other officers shall be entitled to take part in all discussions of the commission relating to their respective departments and offices.

History: En. Sec. 37, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⇐92.
62 C.J.S. Municipal Corporations § 400.

11-3438. (5520.38) **Departments — establishing and changing — consolidations.** In consolidated municipalities of the first, second, third and fourth classes there shall be a department of finance; a police department, a department of public works, a department of health, a fire department, and such other departments and offices as may be established by ordinance. In consolidated municipalities of the fifth, sixth, seventh and eighth classes there shall be a department of finance, a police department, a department of public works and a department of health and such other departments and offices as may be established by ordinance. The commission may change or abolish any department or office established by ordinance and may prescribe, combine, distribute or discontinue the functions and duties thereof. Additional functions and duties may be by ordinance assigned to departments and offices created by this act, but no function or duty assigned by this act to any such department or office shall be discontinued or assigned to any other department or office. If the manager so recommend, and the commission so authorize, the manager may appoint one person to act, as the head of two or more departments or offices; but the department of law must not thus be joined with any other department, nor shall the manager be authorized to act as head of the department of finance, or of any office therein other than of purchasing agent or assessor.

History: En. Sec. 38, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⇐177.
62 C.J.S. Municipal Corporations § 551.

Compiler's Note

Section 16-2419 lists classes of counties through the seventh class.

11-3439. (5520.39) **Subordinates, employment of.** The number of assistants and other subordinates to be employed in or by each administrative department or office shall be fixed by the commission, but the commission may authorize the manager to determine the number of such as-

sistants and subordinates in and for a specified department or office subject to the appropriations made thereto.

History: En. Sec. 39, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⇐177.
62 C.J.S. Municipal Corporations § 551.

11-3440. (5520.40) **List of employees to be kept by director of finance—compensation—recovering illegal payments.** The director of finance shall maintain in his office a list of all persons in the administrative service of the municipality, showing in connection with each name the position held, the date of appointment, the character of employment, and the rate of compensation. Each appointing officer shall promptly transmit to the director of finance such information regarding his department or office as may be necessary to keep this list accurate in all respects at all times. The treasurer shall not pay, nor shall the director of finance issue, any warrant for the payment of, any salary or compensation to any person whose name does not appear upon such list, nor shall payment be made at a rate other than that specified on such list. Any sum paid contrary to the foregoing provisions of this section may be recovered from any officer paying or authorizing the payment thereof or from the surety on his official bond. If through the failure of any officer to give information to the director of finance as required in this section, or through omission or error in such information, payment is made to any person whose name should not be on such list, or payment is made in excess of the amount which any person whose name is rightfully on the list should receive, then the amount of any such payment or excess payment may be recovered from the officer by reason of whose failure, omission or error the payment or excess payment was made, or from the surety on his official bond.

History: En. Sec. 40, Ch. 121, L. 1923.

Cross-Reference

Official bonds of city or town officers and employees, sec. 6-601 et seq.

Collateral References

Municipal Corporations⇐162 (1), 220 (1), (8).
62 C.J.S. Municipal Corporations §§ 523 et seq., 720 et seq.

11-3441. (5520.41) **Compensation schedule to be fixed by commission.** The compensation of officers and employees in the administrative service of the municipality shall be fixed by ordinance, but all positions in such service except those of heads of departments and heads of offices not included within regular departments shall, for purposes of compensation, be graded and classified by the manager according to duties and responsibilities. The commission shall by ordinances establish a schedule of compensation for the positions so graded and classified which shall prescribe uniform compensation for like service as determined by the grading and classification of the manager. Such schedule of compensation may establish a minimum and maximum for any grade, and an increase in compensation within the limits provided for any grade may be granted by the manager upon the basis of efficiency and seniority.

History: En. Sec. 41, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⇐162 (1), 220 (2).
62 C.J.S. Municipal Corporations §§ 523 et seq., 724.

11-3442. (5520.42) **Advisory boards may be appointed—duties.** The manager may appoint a board of citizens qualified to act in an advisory capacity to the head of any specified department or office. The members of all such boards shall serve without compensation and it shall be their duty to consult and advise with the officer in charge of the department or office for which they are appointed but not to direct the conduct of such department or office. Public meetings of such boards may be called for the consideration of the affairs of the department or office for which they are appointed.

History: En. Sec. 42, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⇐131.
62 C.J.S. Municipal Corporations § 473.

11-3443. (5520.43) **Investigation of municipal affairs.** The commission, the manager, or any person or committee authorized by either of them, shall have power to inquire into the conduct of any department or office of the municipality and to make investigations as to municipal affairs, and for that purpose may subpoena witnesses, administer oaths, and compel the production of books, papers and other evidence. It shall be the duty of the manager to designate a police officer to serve subpoenas. The commission shall provide by ordinance the penalty or penalties for contempt in refusing to obey any such subpoena, or to produce such books, papers and other evidence and shall have the power to punish any such contempt in the manner provided by ordinance.

History: En. Sec. 43, Ch. 121, L. 1923.

62 C.J.S. Municipal Corporations §§ 142, 153, 543.

Collateral References

Municipal Corporations⇐60, 168.

11-3444. (5520.44) **Department of law—qualifications and duties of director—salary—prosecutions.** The department of law shall be in charge of a director to be appointed by the commission without definite term, who shall be a resident and elector of the municipality and who shall possess all of the qualifications required of county attorneys. He shall have all the powers and, either personally or by such assistants as he may designate, shall perform all the duties that now are or hereafter may be prescribed for county attorneys, city attorneys and public administrators and, in addition thereto, he shall be chief legal adviser of and attorney and counsel for the municipality and of all departments and offices thereof and shall perform such other duties as may be required by the commission. He shall qualify by taking the oath of office prescribed by the constitution and giving a bond in the amount required of a public administrator in a county of the same class. He shall receive from the state as part of his salary the same amount which is paid by the state to county attorneys in counties of the same class, and the remainder of his salary shall be paid by the municipality. For all purposes in connection with criminal prosecutions he shall be known and designated as "County Attorney of the city and county of .....".

History: En. Sec. 44, Ch. 121, L. 1923.

Cross-Reference

Official bonds of city or town officers and employees, sec. 6-601 et seq.

Collateral References

Municipal Corporations⇐138, 144, 145, 162 (1), 169.

62 C.J.S. Municipal Corporations §§ 476, 490, 491, 522, 544.

11-3445. (5520.45) **Department of finance—powers and duties of director.** The director of finance shall have charge of the administration of the financial affairs of the municipality including the keeping and supervision of all accounts; the custody and disbursement of municipal funds and moneys; the making of special assessments, the assessment of property for taxation; the issuance of licenses; the collection of license fees; the control over expenditures; the purchase, storage and distribution of supplies needed by the municipality; and such other duties as the commission may by ordinance require. He shall also have all powers and perform all duties imposed upon county clerks, recorders and auditors by general law.

History: En. Sec. 45, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⇐169.

62 C.J.S. Municipal Corporations § 544.

11-3446. (5520.46) **Report of revenues and expenses to be made monthly.** The director of finance shall prepare and submit to the commission each month a summary statement of revenues and expenses for the preceding month, detailed as to appropriations and funds in such manner as show the exact financial condition of the municipality and of each department, and office thereof as of the last day of such month.

History: En. Sec. 46, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⇐885.

64 C.J.S. Municipal Corporations § 1885.

11-3447. (5520.47) **Division of audit and accounts—duties—reports to.** There shall be in the department of finance a division of audit and accounts of which the director of finance shall himself be the head. As head of such office he shall be charged with keeping the books of financial account for all departments and offices of the municipality and, whenever practicable, such books and accounts shall be kept in the office of the division of audit and accounts. Report shall be made daily to the division of audit and accounts by each department and office showing the receipt of all moneys and the disposition thereof.

History: En. Sec. 47, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⇐172.

62 C.J.S. Municipal Corporations § 546.

11-3448. (5520.48) **Audit of accounts on death, removal or expiration of term of officer—collection when indebtedness found—other audits.** Upon the death, resignation, removal or expiration of the term of any officer of the municipality the director of finance shall cause an audit and investigation of the accounts of such officer to be made and shall report to the manager and the commission. Either the commission or the manager may at any time provide for an examination or audit of the accounts of any officer or department of the municipal government. In case of the death, resignation or removal of the director of finance, the manager shall cause an audit to be made of his accounts. If, as a result of any

such audit, an officer be found indebted to the municipality the director of finance, or other person making such audit, shall immediately give notice thereof to the commission, the manager and the director of law and the latter shall forthwith proceed to collect such indebtedness.

History: En. Sec. 48, Ch. 121, L. 1923.

11-3449. (5520.49) **Division of treasury—powers and duties—designation of depositories.** There shall be in the department of finance a division of the treasury, the head of which shall be treasurer of the municipality, and who shall have the powers and perform the duties prescribed for city treasurers and county treasurers by general law and who shall be required to qualify by giving a bond in the same amount required of county treasurers of counties of the same class. All moneys received by an officer or employee of the municipality for or in connection with the business of the municipality shall be paid promptly into the treasury. The commission shall by ordinance provide for the prompt and regular payment of such money into the treasury, and shall also, in the manner hereinafter provided, designate the banking institutions with which it shall be deposited.

History: En. Sec. 49, Ch. 121, L. 1923.

Cross-Reference

Official bonds of city or town officers and employees, sec. 6-601 et seq.

Collateral References

Municipal Corporations⇐145, 169.
62 C.J.S. Municipal Corporations §§ 491, 544.

11-3450. (5520.50) **Division of purchase and supplies — purchasing agent—powers and duties.** There shall be in the department of finance a division of purchases and supplies at the head of which there shall be a purchasing agent. The purchasing agent shall make all purchases for the municipality in the manner, and with such exceptions, as may be provided by ordinance and shall, under such regulations as may be provided by ordinance, sell all property, real and personal, of the municipality not needed for public use or that may have become unsuitable for use. He shall have charge of such storerooms and warehouses of the municipality as the commission may by ordinance provide.

History: En. Sec. 50, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⇐169.
62 C.J.S. Municipal Corporations § 544.

11-3451. (5520.51) **Supplies—purchase—limit on furnishing supplies to departments and offices.** Before making any purchase or sale the purchasing agent shall give opportunity for competition, under such rules and regulations as the commission may by ordinance establish. Supplies required by any department or office of the municipality may be furnished upon requisition from the stores under the control of the purchasing agent, and whenever so furnished shall be paid for by the department or office furnished therewith by warrant made payable to the credit of the store's account of the division of purchases and supplies. The purchasing agent shall not furnish any supplies to any department or office unless there be to the credit thereof an available unencumbered appropriation balance sufficient to pay for such supplies.

History: En. Sec. 51, Ch. 121, L. 1923.

Collateral References
Municipal Corporations⇐236, 891.

63 C.J.S. Municipal Corporations § 995 et seq.; 64 C.J.S. Municipal Corporations § 1888 et seq.

11-3452. (5520.52) **Division of assessment — assessor — qualification, duties and powers.** There shall be in the department of finance a division of assessment the head of which shall be the assessor. The assessor and his deputies shall have the powers, qualify in the manner, and perform the duties prescribed for county assessors and deputy assessors by general law.

History: En. Sec. 52, Ch. 121, L. 1923.

Collateral References
Municipal Corporations⇐971 (2).
64 C.J.S. Municipal Corporations § 2033.

11-3453. (5520.53) **Assessor's duties concerning special assessments.** The assessor shall also be in charge of the preparation of all special assessments for public improvements; the giving of notice of such assessments to property owners; and the certification of all unpaid assessments to the director of finance.

History: En. Sec. 53, Ch. 121, L. 1923.

Collateral References
Municipal Corporations⇐451.
63 C.J.S. Municipal Corporations § 1393.

11-3454. (5520.54) **Fiscal year defined.** The fiscal year of the municipality shall begin with the first day of July and shall end with the next succeeding thirtieth day of June, and all of the provisions of the general laws of the state in respect to budgets for cities and counties shall apply to such municipality.

History: En. Sec. 54, Ch. 121, L. 1923.

Collateral References
Municipal Corporations⇐879.
64 C.J.S. Municipal Corporations § 1878.

11-3455. (5520.55) **Tax levy for current expense—limitation on.** No ordinance making the annual tax levy shall be passed fixing the rate to be levied upon all property within the municipality to defray current expenses, including salaries otherwise unprovided for, in excess of the maximum levies prescribed by law for general fund purposes in the county and the cities and towns which have been consolidated into a single government.

History: En. Sec. 55, Ch. 121, L. 1923; amd. Sec. 1, Ch. 81, L. 1967.

11-3456. (5520.56) **Tax levy limit—application of.** The tax limit provided by section 11-3455 shall apply only to taxes for the purposes therein specified. Taxes required by this act to be levied on account of the debt of the municipality, or any district thereof, and special taxes authorized by this act or by the general laws of the state, shall not be affected by such limits nor shall such taxes be considered in determining the limits of taxation fixed by section 11-3455.

History: En. Sec. 56, Ch. 121, L. 1923.

11-3457. (5520.57) **Special taxes—power to levy.** The municipality shall have the power and authority to levy special taxes for all purposes which counties, cities and towns are authorized to levy by general laws of the state, and all of the provisions of such laws shall be applicable to and shall govern and control the municipality in the levying and collection of such special taxes.

History: En. Sec. 57, Ch. 121, L. 1923.

Collateral References
Municipal Corporations⇐961.
64 C.J.S. Municipal Corporations § 1992.

11-3458. (5520.58) **Tax levy for special services.** The commission may by ordinance designate clearly specified districts in or for which special services are to be performed and may levy upon the property in any such district such tax, in addition to any taxes authorized by section 11-3455 as may be necessary with other available funds and grants to pay the cost of such special service or services. The boundaries of special service districts shall be regularly reviewed by the commissioners and may be adjusted upon recommendation by an authorized planning body in response to changing population patterns; but in no case shall such additional levy be more than twenty (20) mills.

History: En. Sec. 1, Ch. 162, L. 1925; amd. Sec. 2, Ch. 81, L. 1967.

Collateral References
Municipal Corporations⇐956 (2), 961.
64 C.J.S. Municipal Corporations §§ 1978, 1992.

11-3459. (5520.59) **Collection of taxes.** All taxes levied by the municipality shall be collected and payable in the manner, at the time and under the penalties prescribed by law for the collection and payment of state and county taxes.

History: En. Sec. 58, Ch. 121, L. 1923.

64 C.J.S. Municipal Corporations § 2070 et seq.

Collateral References
Municipal Corporations⇐978 (1).

11-3460. (5520.60) **Tax levies for indebtedness of special districts and cities and towns.** The district comprised within the boundaries of any city, town or district, existing within the county at the time of the adoption of this act by the electors thereof shall, for the purpose of paying the interest and principal of any debt incurred by such city, town or district prior to such adoption, be continued as a special district until such debt shall have been paid, and the commission shall, in the annual tax levy ordinance, levy upon the property within each such district such tax, in addition to all other taxes, as the director of finance shall report to be necessary to provide for paying the interest on each such debt as it falls due and the principal thereof as it matures, and no other property within the municipality shall be taxable or made liable for the payment of any such debt. The commission shall likewise provide in the annual tax levy ordinance for the levy of such tax upon all property within the municipality as the director of finance shall report to be necessary to provide for paying the interest as it falls due and the principal as it matures of any debt of the municipality as a whole. The tax levy for the debt of the municipality as a whole, and the tax levy for the debt of each such district, shall

each be a separate levy and shall be distinct from and in addition to all other tax levies, and the proceeds of each such tax levy shall be placed in a separate fund for the payment of the interest and principal of the debt for which the tax was levied, and no part of any such fund shall be used for any other purpose whatever.

History: En. Sec. 59, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⊂⇒964.
64 C.J.S. Municipal Corporations § 1997.

CHAPTER 35

CITY AND COUNTY CONSOLIDATED GOVERNMENT (continued)

Section

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11-3501. (5520.61) **Warrants, how issued.** No claim against the municipality shall be paid except by means of a warrant on the treasury issued by the director of finance. The director of finance shall issue no warrant for the payment of a claim unless the claim be evidenced by a voucher approved by the head of the department or office for which the indebtedness was incurred, and each such officer and his surety shall be liable to the municipality for all loss or damage sustained by reason of his negligent or corrupt approval of any claim.

History: En. Sec. 60, Ch. 121, L. 1923. 64 C.J.S. Municipal Corporations §§ 1892, 1894.

Collateral References

Municipal Corporations⇐896, 898.

11-3502. (5520.62) **Examination of claims by director of finance—liability for illegal payment of claim.** The director of finance shall examine all payrolls, bills and other claims and demands against the municipality and shall issue no warrant for payment unless he finds that the claim is in proper form, correctly computed and duly approved; that it is legally due and payable; and that an appropriation has been made therefor which has not been exhausted. He may investigate any claimant and for that purpose may summon before him any officer, agent or employee of the municipality, any claimant or other person, and examine him upon oath or affirmation relative thereto, and if he finds a claim to be fraudulent, erroneous or otherwise invalid or that the appropriation out of which such claim is payable has been exhausted, he shall not issue a warrant therefor. If the director of finance issue a warrant on the treasury authorizing payment of any claim in contravention of the provisions of this section he and his sureties shall be individually liable to the municipality for the amount of such warrant if paid.

History: En. Sec. 61, Ch. 121, L. 1923.

62 C.J.S. Municipal Corporations § 547; 64 C.J.S. Municipal Corporations § 2176.

Collateral References

Municipal Corporations⇨173 (2), 1009.

11-3503. (5520.63) **Obligations for works to be paid by special assessments—certificate of finance director necessary before payment.** No contract, agreement or other obligation, other than contracts pertaining to work or improvements to be paid for by special assessments, involving the expenditure of any funds shall be entered into, nor shall any order for such expenditures be valid, unless the director of finance shall first certify to the commission that the object or purpose for which such expenditure is to be made and the amount thereof is provided for by an appropriation in the annual budget, or in a supplemental budget, and that the same has not been expended. The certificate of the director of finance shall be filed and made a matter of record in his office, and the appropriation for such purpose shall thereafter be considered as having been set aside and expended to the amount of such contract, agreement or obligation.

History: En. Sec. 62, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⇨883.

64 C.J.S. Municipal Corporations § 1883.

11-3504. (5520.64) **Obligation void when violating preceding section.** All contracts, agreements or other obligations entered into, all ordinances and resolutions passed, and orders adopted, contrary to the provisions of section 11-3503 shall be void, and no person whatever shall have any claim, or demand against the municipality thereunder, nor shall the commission or any officer of the municipality waive or qualify the limitations fixed by such section, or fasten upon the municipality any liability whatever in excess thereof.

History: En. Sec. 63, Ch. 121, L. 1923.

11-3505. (5520.65) **Designation of depositories — securities.** On or before the first day of August of each year the commission shall designate the banks subject to state or national supervision in which the funds of the municipality shall be deposited. In designating such banks the commission shall specify the maximum amount of municipal funds that may be kept at any time in each. Unless a bank designated as a depository shall elect to deposit securities with the treasurer, as provided in the next succeeding section, it shall give good and sufficient bonds, with sureties to be approved by the commission, conditioned for the safekeeping and payment of the municipal funds deposited therewith and the interest thereon. Any such bonds of a depository shall be in the aggregate equal to the amount designated by the commission as the maximum of municipal funds which may at any time be kept by such depository.

History: En. Sec. 64, Ch. 121, L. 1923.

26A C.J.S. Depositaries §§ 8, 9.

42 Am. Jur. 724, Public Funds, § 12.

Collateral References

Depositaries⇨6, 7.

11-3506. (5520.66) **Bonds as depository securities—interest—substitution of securities.** In lieu of the surety bonds specified in the next pre-

ceding section any bank designated as a depository of municipal funds may deposit with the treasurer bonds of the class and kind in which, by the provisions of this act, the sinking fund of the municipality may be invested. Bonds so deposited shall be in an amount equal to the amount of municipal funds permitted at any time to be deposited with such bank, shall be approved by the commission and shall be accompanied by proper assignment, to the end that the bank so depositing and assigning such bonds will safely keep and pay over to the treasurer, or his order, on demand and free of exchange, all moneys at any time deposited therein with interest thereon at the rate agreed upon, and that in case of default on the part of such bank the commission shall have power and authority to sell such bonds, or so much thereof as may be necessary, to realize the full amount of the funds deposited therein. The bank shall be entitled to interest on the securities so deposited with the treasurer, when paid, and to the return of the securities at the termination of such trust so long as the bank is not in default. With the approval of the commission a bank may at any time substitute other like securities of equal value for those so deposited.

History: En. Sec. 65, Ch. 121, L. 1923.

26A C.J.S. Depositaries § 9.
42 Am. Jur. 742, Public Funds, § 36.

Collateral References
Depositaries⇐7.

11-3507. (5520.67) **Additional or new securities — when required.** Whenever for any cause the commission shall deem the bonds or securities of any bank insufficient security for the municipal funds deposited or likely to be deposited therein the commission shall require new bonds to be given or new securities to be deposited with the treasurer. If any bank shall fail promptly to execute and present such new bonds, or deposit such new securities, the treasurer shall at once withdraw all deposits therefrom and no further deposit of municipal funds shall be made therein until such bank shall have been redesignated by the commission as a depository.

History: En. Sec. 66, Ch. 121, L. 1923.

11-3508. (5520.68) **Surety bonds—record of sureties.** All surety bonds given by a bank in accordance with the provisions of this act shall continue in force so long as funds of the municipality deposited therein shall be unpaid. Nothing herein provided shall impair the rights and remedies of the municipality on such bonds under the laws of the state. Bonds and other securities given by banks in accordance with this act shall be entered in a record to be kept for that purpose by the director of finance and deposited with the treasurer for safekeeping. The record of such bonds and securities kept by the director of finance, or copies thereof certified by that officer, shall be competent and prima facie evidence of the contents and tenor thereof.

History: En. Sec. 67, Ch. 121, L. 1923.

11-3509. (5520.69) **Deposit of funds — distribution.** All funds received by the treasurer shall be deposited by him in the designated banks

in the name of the municipality subject to the order of the treasurer, and shall be distributed among the designated banks as nearly as may be in proportion to the maximum amounts which they have been authorized to receive by the commission.

History: En. Sec. 68, Ch. 121, L. 1923.

Collateral References
Depositaries⇨8.
26A C.J.S. Depositaries §§ 7, 11.

11-3510. (5520.70) **Interest on deposits—payment—monthly finance and interest statement.** Banks designated as depositories shall pay interest on daily balances of municipal funds at a rate approved by the commission, which shall in no case be less than two and one-half per centum. The interest due on such deposits shall be paid to the treasurer by check on the last day of each quarter of the fiscal year. If the treasurer shall at any time receive, or have in any bank, funds which will probably remain on deposit three months or longer he may, with the approval of the commission either take therefor certificates of deposit from a designated depository, payable to his order on demand, and bearing a higher rate of interest, or invest such funds in any bonds maturing within six months in which the sinking fund of the municipality may be invested. The treasurer shall make a monthly statement to the director of finance of the municipal funds in each bank, and the interest received therein, as of the last day of each month.

History: En. Sec. 69, Ch. 121, L. 1923.

11-3511. (5520.71) **Disbursement of money by depositories.** No bank receiving funds of the municipality on deposit shall have authority to pay out any such money except upon checks drawn upon that bank signed by the treasurer.

History: En. Sec. 70, Ch. 121, L. 1923.

Collateral References
Depositaries⇨9.
26A C.J.S. Depositaries § 12.

11-3512. (5520.72) **Liability of treasurer and sureties for deposits.** When the funds of the municipality are deposited and kept in designated banks according to the provisions of this act the treasurer and the sureties on his official bond shall be exempt from all liability for the loss of any funds so deposited if such loss is caused by the failure, bankruptcy, or any other act or default of such banks, but the want of care or due diligence on the part of the treasurer or commission in protecting the municipality against loss, shall not exempt the treasurer, the members of the commission or sureties on their respective bonds from liability. Nothing herein provided shall deprive the municipality of any right or remedy against any defaulting bank or against its officers or stockholders.

History: En. Sec. 71, Ch. 121, L. 1923.

Collateral References
Municipal Corporations⇨173 (3).
62 C.J.S. Municipal Corporations § 547.

11-3513. (5520.73) **Limit of indebtedness.** The municipality shall not become indebted in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding five per cen-

tum (5%) of the value of the taxable property therein as ascertained by the last assessment for state and county taxes prior to incurring such indebtedness, and all warrants, bonds or obligations in excess of such amount given by or on behalf of the municipality shall be void.

History: En. Sec. 72, Ch. 161, L. 1923.

Collateral References

Municipal Corporations⇐863.
64 C.J.S. Municipal Corporations § 1846.

11-3514. (5520.74) **Borrowing money — provisions affecting.** The consolidated municipality may borrow money or issue bonds for any municipal purpose to the extent and in the manner provided by the constitution and laws of Montana for the borrowing of money or issuing of bonds by counties and cities and towns.

History: En. Sec. 73, Ch. 121, L. 1923.

64 C.J.S. Municipal Corporations §§ 1869, 1905.

Collateral References

Municipal Corporations⇐869, 910.

11-3515. (5520.75) **Sinking fund board—investments.** The sinking funds of the municipality shall be in charge of a sinking fund board consisting of the president, the director of finance and the director of law. The president shall be the chairman and the director of finance the secretary of the board. By and with consent of the commission the sinking fund board shall invest the sinking fund in bonds or certificates of indebtedness of the United States; state bonds or certificates of indebtedness of Montana or any other state of the United States; bonds of the municipality; registered warrants on the treasury of such municipality; bonds of any city in the state of Montana; and in such county or school bonds of Montana as may be approved by the commission. In case the sinking fund be invested in bonds of the municipality such bonds shall not be canceled before maturity but shall be held by the sinking fund board and the interest thereon paid over and applied to the increase of the sinking fund. Whenever the principal of any of the bonds of the municipality shall become due the sinking fund board shall, with the consent of the commission, dispose of such of the bonds belonging to the sinking fund as, with the money on hand belonging to the sinking fund, shall be necessary to pay the bonds so becoming due.

History: En. Sec. 74, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⇐951.
64 C.J.S. Municipal Corporations §§ 1953, 1954.
43 Am. Jur. 324, Public Securities and Obligations, § 67.

Liability of officer for loss of sinking fund through failure of bank. 25 ALR 1358.

Constitutionality, construction, and application of statute empowering municipal corporations to issue bonds the proceeds of which shall be invested in municipal securities. 108 ALR 736.

11-3516. (5520.76) **Letting of contracts—advertising for bids—execution.** All contracts entered into by the municipality for supplies or materials, for any public work, or for the construction, reconstruction, repair, maintenance or operation of any public works or improvements for which must be paid a sum exceeding two thousand dollars ($2,000) shall be awarded to the lowest responsible bidder, after public advertisement and competition as may be prescribed by ordinance, but the manager

shall have the right to reject all bids and advertise again. All advertisements as to contracts shall contain a reservation of the foregoing right. All contracts entered into by the municipality shall be signed by the manager after approval thereof by the commission.

History: En. Sec. 75, Ch. 121, L. 1923; amd. Sec. 1, Ch. 80, L. 1967.

Collateral References

Municipal Corporations⇨236, 330 (1).

63 C.J.S. Municipal Corporations §§ 995 et seq., 1147.

43 Am. Jur. 764, Public Works and Contracts, § 23 et seq.

Bidder's variation from specifications on bid for public work. 65 ALR 835.

Evasion of law requiring contract for public work to be let to lowest responsible bidder by subsequent changes in contract after it has been awarded pursuant to that law. 69 ALR 697.

What is an "emergency" within statutory provision excepting emergency contract or work from requirement of bidding on public contracts. 71 ALR 173.

Right in submitting proposal for bids on public works to require bid on unit basis, with reservation to public authorities of right to determine amount or extent of work. 79 ALR 225.

Mandamus to compel consideration, acceptance, or rejection of bids for public contract. 80 ALR 1382.

Right to award public contract to one other than lowest financial bidder as affected by fact that bidder furnishes bond. 86 ALR 131.

Change in proposals for public contract after submission of bid as justification for withdrawal of bid or refusal to enter into contract. 104 ALR 1149.

Labor conditions or relations as factor in determining lowest responsible bidder for public contract or as factor in determining whether public contract should be let to lowest bidder. 110 ALR 1406.

Statute requiring competitive bidding for public contract as affecting validity of agreement, subsequent to the award of the contract, to allow the contractor additional compensation for extras or additional labor and material not included in the written contract. 135 ALR 1265.

Liability of municipality or other governmental body on implied or quasi contract for value of property or work. 154 ALR 356.

Rights and remedies of bidder for public contract who has not entered into a contract, where bid was based on his own mistake of fact or that of his employees. 52 ALR 2d 792.

11-3517. (5520.77) **Alteration of contracts.** When it becomes necessary in the opinion of the manager to make alterations or modifications in any contract entered into by the municipality such alterations shall be made only when authorized by the commission upon the written recommendation of the manager. No such alteration shall be valid unless the new price to be paid for any supplies, material or work under the altered or modified contract shall have been agreed upon in writing and signed by the contractor and the manager prior to such authorization by the commission.

History: En. Sec. 76, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⇨252, 354.

63 C.J.S. Municipal Corporations §§ 1016 et seq., 1183.

11-3518. (5520.78) **Police department—powers of officers—director—duties and powers—designation as sheriff—deputies—tenure of officers—police reserve funds.** The police department shall be in charge of a director who shall be chief of the police force of the municipality. Officers and patrolmen of the police department, subordinate to the director, shall have the powers and perform the duties conferred on and required of police officers and patrolmen in cities and towns by the laws of this state and such powers and duties as may be conferred and required by the ordinances of the municipality. The director shall have the powers and perform the duties conferred on and required of sheriffs and police officers and

patrolmen shall have the powers and perform the duties conferred on and required of deputy sheriffs by the general laws of the state. For the purpose of serving and making return on all criminal and civil process, executing judgments, decrees and orders of court and making sales thereunder and returns thereof, the director shall be known and designated as "Sheriff of the city and county of ....." and each police officer and patrolman shall be known and designated as deputy sheriff.

Any police officer employed by any police department or departments, established as required by law in any city or town of the county prior to the election and qualification of a commission under this act, shall have the same job tenure rights as though no such election and qualification had taken place. Any such police officer who has vested rights in any police reserve fund shall maintain prior vested rights in such fund upon its transfer to a consolidated county municipality. Any police reserve fund established as required by law in any city or town of the county prior to the election and qualification of a commission under this act, shall be continued as such for the police department of the municipality, subject, however, to the prior vested rights of any police officer employed by any police department or departments, established as required by law in any city or town of the county prior to the election and qualification of a commission under this act. The board of trustees of such police reserve fund shall consist of the president, the director of finance, the director of law and two (2) members of the police department from the active list of the police officers of said municipality, who shall be selected by a majority vote of the members of the police department on the active list of said municipality. Such selection shall be made between the first and tenth day of May in each year and said active police officer members of said board shall serve overlapping two (2) year terms. Except as provided in this section, the police reserve fund shall be continued and administered in the manner prescribed by law for such funds established in cities and towns.

History: En. Sec. 77, Ch. 121, L. 1923; amd. Sec. 1, Ch. 190, L. 1961.

Collateral References

Municipal Corporations⇐182, 189 (1).
62 C.J.S. Municipal Corporations §§ 565, 575.

11-3519. (5520.79) **Department of public works—director—powers and duties.** The department of public works shall be in charge of a director who shall manage and have charge of the construction, repair, improvement and maintenance of all public buildings, of roads, streets, alleys, sidewalks, bridges, viaducts and other public ways; of sewers, drains, ditches, culverts, streams and watercourses; and of boulevards, parks, playgrounds, cemeteries and other public places and grounds dedicated to public use. He shall manage and control all public cemeteries, crematories, market places or houses, garbage and sewage disposal, plants and farms, and all public utilities belonging to the municipality, or any subdivision thereof, and shall have charge of the enforcement of the obligations to the municipality of all privately owned or operated public utilities enforceable by the municipality. He shall have charge of the cleaning, sprinkling and lighting of the streets and the collection and disposal of garbage and waste. He shall also be responsible for the making and preservation of all surveys,

maps, plans, drawings and estimates for such public work, and for the preservation of contracts, papers, plans, tools and appliances belonging to the municipality and pertaining to the functions of the department.

History: En. Sec. 78, Ch. 121, L. 1923.

62 C.J.S. Municipal Corporations § 556 et seq.

Collateral References

Municipal Corporations⇨178.

11-3520. (5520.80) **Director of public works—qualifications—powers and duties.** The director of public works shall have the qualifications prescribed by law for county surveyors and, in addition to the duties required by this act and by the ordinances of the municipality, he shall have the powers and shall, either in person or by a deputy having the qualifications prescribed by law for county surveyors, perform the duties required of county surveyors by the laws of the state.

History: En. Sec. 79, Ch. 121, L. 1923.

11-3521. (5520.81) **Department of health—director—qualifications—powers and duties.** The director of the department of health shall be a physician legally authorized to practice medicine and surgery in the state of Montana. Except as otherwise provided in this act the director of the department of health shall have the powers and perform the duties conferred on and required of coroners and county health officers and local health officers by the general laws of the state. He shall also have such other powers and perform such other duties as may be prescribed by ordinance.

History: En. Sec. 80, Ch. 121, L. 1923.

62 C.J.S. Municipal Corporations §§ 654, 657.

Collateral References

Municipal Corporations⇨191.

11-3522. (5520.82) **County board of health—exercise of duties.** The commission shall be the county board of health in and for the municipality, but in performing the duties and exercising the powers prescribed by law for such boards the commission shall act by ordinance, resolution or vote and according to the procedure prescribed by this act to be followed when acting as commission of the municipality, and it shall not be necessary to the validity of any such action for the commission to declare, or for the records thereof to indicate that it is acting in other than its usual capacity. Regulations affecting the public health, additional to those established by general law, and for the violation of which penalties are imposed, may be prescribed by ordinance and enforced as provided therein.

History: En. Sec. 81, Ch. 121, L. 1923.

Collateral References

Health⇨3, 6.

39 C.J.S. Health §§ 4, 7, 9, 10.

11-3523. (5520.83) **Fire department—director and chief—voluntary fire districts continued—law governing districts.** (a) The fire department of the municipality shall be in charge of a director who shall be chief thereof and who shall manage and control the department in the manner prescribed by the ordinances of the municipality.

(b) Provided that notwithstanding any other provision of law the adoption of a consolidated county municipal government shall have no effect on the existence, rights or duties of any voluntary fire department or fire district created and legally in existence pursuant to the provisions of chapter 20, Title 11, Revised Codes of Montana, 1947.

(c) Provided further that nothing in chapter 34, Title 11, Revised Codes of Montana, 1947, shall be construed to prohibit the creation of voluntary fire departments or fire districts pursuant to the provisions of chapter 20, Title 11, Revised Codes of Montana, 1947, within consolidated county municipalities.

(d) Voluntary fire departments or fire districts within consolidated county municipalities shall only be organized, created, supported, financed, dissolved, managed, and their boundaries shall only be changed, pursuant to the provisions of chapter 20, Title 11, Revised Codes of Montana, 1947. These organizations may enter mutual aid agreements as provided by section 11-2010, R. C. M. 1947.

History: En. Sec. 82, Ch. 121, L. 1923; amd. Sec. 1, Ch. 191, L. 1961; amd. Sec. 2, Ch. 2, L. 1965.

Compiler's Notes

Section 11-2009, contained in the reference to chapter 20, Title 11, referred to in subsecs. (b), (c), and (d), has been held unconstitutional in Great Northern Ry. Co. v. Roosevelt County, 134 M 355, 332 P 2d 501.

Sections 11-2011 to 11-2019, and 11-2021, contained in the reference to chapter 20, Title 11, referred to in subsecs. (b), (c), and (d), have been repealed. Sections 11-2011 to 11-2019 were repealed by Sec. 3, Ch. 75, Laws 1953. Section 11-2021 was repealed by Sec. 242, Ch. 147, Laws 1963.

Collateral References

Municipal Corporations⇐196.
62 C.J.S. Municipal Corporations § 597.

11-3524. (5520.84) **Firemen's tenure—firemen's disability and pension funds—how continued—protection of rights in.** Any firemen employed by any fire department or departments, established as required by law in any city or town of the county prior to the election and qualification of a commission under this act, shall have the same job tenure rights as though no such election and qualification had taken place. Any such fireman who has vested rights in any disability or pension fund shall maintain prior vested rights to such funds upon their transfer to a consolidated county municipality. Any disability or pension fund, or funds, of the fire department or departments, established as required by law in any city or town of the county prior to the election and qualification of a commission under this act, shall be continued as one such fund for the fire department of the municipality, subject, however, to the prior vested rights of any firemen employed by any fire department or departments, established as required by law in any city or town of the county prior to the election and qualification of a commission under this act. The board of trustees of such disability or pension fund shall consist of the president, the director of finance, the director of law, the director of the fire department, and one member of the fire department selected by a majority of the members of such department between the first and tenth day of July of each year in which the municipality shall elect members of the commission. Except as provided in this section, the disability or pension fund of the fire department shall be continued and administered in the manner prescribed by law for such funds established in cities and towns.

History: En. Sec. 83, Ch. 121, L. 1923; amd. Sec. 1, Ch. 192, L. 1961.

Collateral References
Municipal Corporations⇐200.
62 C.J.S. Municipal Corporations § 614.

11-3525. (5520.85) **Superintendent of schools — appointment — compensation—powers and duties.** The commission shall, by majority vote of all its members, appoint a municipal superintendent of schools to serve without definite term, but subject to removal at the pleasure of the commission. The superintendent of schools for any district within the municipality may, with the consent of the trustees of such district, be appointed to serve as municipal superintendent. The compensation of the municipal superintendent shall be fixed by the commission, and he shall have the powers and perform the duties prescribed for county superintendents of schools by the laws of the state.

History: En. Sec. 84, Ch. 121, L. 1923.

Collateral References
Schools and School Districts⇐63 (1), (3).

78 C.J.S. Schools and School Districts § 119 et seq.

11-3526. (5520.86) **Police court—judge—qualifications—compensation—jurisdiction.** A police court is hereby established in and for each municipality with the jurisdiction, powers and duties within the municipality provided by general law for police courts in cities and towns, and for justices of the peace. The commission shall, by majority vote of all its members, appoint a police judge or judges to serve during the pleasure of the commission. No person shall be appointed police judge unless at least twenty-five years of age and admitted to practice law in the state of Montana. The compensation of the police judge or judges shall be fixed by the commission.

History: En. Sec. 85, Ch. 121, L. 1923.

Collateral References
Courts⇐41; Judges⇐3, 4, 22 (1).

21 C.J.S. Courts §§ 120, 134, 138; 48 C.J.S. Judges §§ 12-19, 34, 35, 37.

11-3527. (5520.87) **Construction of public works.** Any local public work may be done or any local public works or improvements may be constructed, reconstructed, repaired, maintained or operated either by contract or directly by the municipality as may be determined by the commission. Before authorizing that any local public works or improvements be directly constructed, reconstructed, repaired, maintained or operated, detailed plans and estimates for each such work or improvement shall be submitted to the commission by the manager, and there shall be separate accounting for each work or improvement so executed.

History: En. Sec. 86, Ch. 121, L. 1923.

Collateral References
Municipal Corporations⇐278 (4), 283.

63 C.J.S. Municipal Corporations §§ 1069, 1080.

11-3528. (5520.88) **Special improvement districts—power to create.** The municipality shall have the same power and authority to create special improvement districts and for like purposes, and to create special light-

ing districts and sprinkling districts as provided by the laws of the state for cities, and towns.

History: En. Sec. 87, Ch. 121, L. 1923.

63 C.J.S. Municipal Corporations § 1359 et seq.

Collateral References

Municipal Corporations⇨450 (1).

11-3529. (5520.89) **Public works, director to have charge of—special improvement districts, laws applicable to.** The director of public works shall be the engineer in charge of all such work, works or improvements. The provisions of the general law of the state regarding special improvement districts, special lighting districts and sprinkling districts in cities and towns shall apply to and control the establishment under this act of special improvement districts, special lighting districts and sprinkling districts in and for the municipality and the procedure according to which any local public work or the construction, reconstruction, repair, maintenance or operation of any local public work or improvement is to be provided for when the cost thereof is to be paid in whole or in part by assessments upon the property within any such district, and such general law shall also apply to the manner of levying and collecting such assessments.

History: En. Sec. 88, Ch. 121, L. 1923.

62 C.J.S. Municipal Corporations § 556 et seq.; 63 C.J.S. Municipal Corporations § 1297.

Collateral References

Municipal Corporations⇨178, 408 (1).

11-3530. (5520.90) **Elections—officers to act.** For any election held on the question of the adoption of this act, and for the first election of members of the commission thereunder, if adopted the county clerk and board of county commissioners shall exercise the powers and perform the duties respecting elections prescribed for county clerks and boards of county commissioners by the general laws of the state. After the adoption of this act by the electors of the county, and the election and qualification of a commission thereunder, the powers and duties of county clerks and boards of county commissioners under the general election laws of the state shall devolve upon the clerk and commission of the municipality and, except as otherwise provided in this act, the provisions of such laws shall continue to apply to all elections held within the municipality.

History: En. Sec. 89, Ch. 121, L. 1923.

62 C.J.S. Municipal Corporations §§ 95 et seq., 142, 152 et seq., 542.

Collateral References

Municipal Corporations⇨48 (2), 60, 169.

11-3531. (5520.91) **Municipal primary election — when held — nominees, majority vote elects—time for polls to be open—conduct of election.** A municipal primary election for the choice of members of the commission shall be held on the last Tuesday in April in each year in which members of the commission are to be elected. All candidates for the commission receiving a majority of the votes cast at the municipal primary election shall be deemed and declared elected to the commission. If candidates equal to the number of members of the commission to be elected do not receive a majority of the votes cast at such primary election, a municipal primary election shall be held on the first Tuesday in June next following

the election. At all municipal elections the polls shall be open from 8 a. m. to 6 p. m. The time, manner and method of establishing election precincts and polling places and appointment of judges of election and the method of conducting election, registering voters therefor, counting the votes cast thereat, and canvassing the returns thereof, shall be as prescribed by the general election laws of the state.

History: En. Sec. 90, Ch. 121, L. 1923.

29 C.J.S. Elections § 66 et seq.; 62 C.J.S. Municipal Corporations § 468 et seq.

Collateral References

Elections⇐29 et seq.; Municipal Corporations⇐129.

11-3532. (5520.92) **Nominating petitions.** Any elector of the municipality eligible to membership in the commission may be placed in nomination therefor by petition filed with the clerk and signed by at least two per centum (2%) of the qualified electors whose names appear upon the official register of voters of the municipality. The signatures to a nominating petition need not all be appended to one paper, but to each separate leaf of the petition there shall be attached an affidavit of the circulator thereof stating that each signature appended thereto was made in his presence and is the genuine signature of the person whose name it purports to be. Each signer of a petition shall sign his name in ink or indelible pencil and, after his name, shall designate his residence by street and number or other description sufficient to identify the place, and give the date when his signature was made. No elector shall sign petitions for more candidates for the commission than the number of places to be filled therein at the forthcoming primary election.

History: En. Sec. 91, Ch. 121, L. 1923.

Collateral References

Elections⇐144.
29 C.J.S. Elections §§ 108, 135.

11-3533. (5520.93) **Form of nominating petition.** The form of nominating petition papers shall be substantially as follows:

We, the undersigned electors of the city and county of ....., hereby nominate ..... whose residence is ..... for the office of commissioner, to be voted for at the primary election to be held on the last Tuesday of April, 19...., and we individually certify that we are qualified to vote for candidates for the above office and that we have not signed nominating petitions for more than ..... candidates for the commission.

Residence (street and number) or description to identify place.	Name.	Date.
.....	.....	.....
.....	.....	.....
.....	.....	.....

State of Montana, city and county of ..... ss.

....., being duly sworn, deposes and says that he is the circulator of this petition paper; that the signatures appended thereto were made in his presence and are the genuine signatures of the persons whose names they purport to be.

Signed.....

Subscribed and sworn to before me this ..... day of ....., 19.....

Notary public for the state of Montana, residing at ....., Montana. My commission expires ....., 19.....

History: En. Sec. 92, Ch. 121, L. 1923.

11-3534. (5520.94) **Filing of petitions—notification of nominees—entry of names on ballot.** All separate leaves comprising a nominating petition shall be assembled and filed with the clerk as one instrument at least thirty days prior to the next succeeding last Tuesday in April. Within five days after the filing of the nomination petition the clerk shall notify the person named therein as a candidate whether such petition is signed by the required number of qualified electors. Any eligible person placed in nomination as hereinbefore provided shall have his name printed on the ballots and placed upon any voting machine used at the primary election, if within five days after such nomination, he shall have filed with the clerk a written acceptance of the nomination.

History: En. Sec. 93, Ch. 121, L. 1923.

Collateral References

Elections⇐126 (5), 145.
29 C.J.S. Elections §§ 118, 137.

11-3535. (5520.95) **Ballots—party designation forbidden—form.** No party mark or designation shall appear on the ballots, or in connection with the names of candidates on any voting machine, used in the election of members of the commission. Each elector may vote for as many candidates for the commission as there are places to be filled therein; but any ballot marked for more candidates than the number of places to be filled shall not be counted for any of the candidates for which marked. The ballots shall be in form substantially as follows:

MUNICIPAL ELECTION

City and county of .....

(Month and day of month), 19....

FOR COMMISSIONERS

Do not vote for more than .....

.....	.....
.....	.....
.....	.....

History: En. Sec. 94, Ch. 121, L. 1923.

11-3536. (5520.96) **Ballot—order of names.** At 2 o'clock p. m. on the tenth day before any election at which members of the commission are to be nominated and elected, the clerk shall publicly determine by lot the order in which the names of candidates for election to the commission shall be printed on the ballots, or appear on any voting machine, to be used at such election.

History: En. Sec. 95, Ch. 121, L. 1923.

11-3537. (5520.97) **Ballots — blank spaces.** As many blank spaces shall be left on the ballots below the printed names of candidates for the commission as there are places to be filled therein. In any such space an

elector may write the name of any eligible person, and a vote cast for such person shall be counted as though for a candidate whose name is printed on the ballots.

History: En. Sec. 96, Ch. 121, L. 1923.

11-3538. (5520.98) **Notices — primary election — municipal election — publication.** On the tenth day prior to the municipal primary election the clerk shall cause notice thereof to be published in such daily newspaper or newspapers, printed and published within and of general circulation in the municipality as the commission may have designated, and if there be no daily newspaper then in such weekly newspaper or newspapers as may be so designated. In case the commission fail to designate such newspaper or newspapers, the clerk shall cause the notice to be published in such newspaper or newspapers printed and published within and of general circulation in the municipality as he may select. Such published notice shall contain a list of the candidates for the commission nominated as hereinbefore provided, and state the time of holding the election. On the tenth day prior to a municipal election held on the first Tuesday in June the clerk, under like conditions, shall cause a similar notice to be published concerning that election. The commission may also provide for giving notice of such elections by other means.

History: En. Sec. 97, Ch. 121, L. 1923.

Collateral References

Elections⇐126 (2).
29 C.J.S. Elections § 117.

11-3539. (5520.99) **Ballots at municipal election—what names to appear.** At any municipal election held for the choice of members of the commission of the first Tuesday in June following a municipal primary election there shall be printed on the ballots and placed on the voting machines the names of the candidates receiving the highest number of votes at the municipal primary election, except the names of those elected to the commission thereat, and the number of names so printed on the ballots and placed on the voting machines shall be equal to double the number of places remaining to be filled in the commission. If, by reason of their having received the same number of votes, it cannot be determined which of two or more candidates shall have his name, or their names, printed on the ballots and placed on the voting machines, then, notwithstanding the foregoing provisions of this section the names of all such candidates receiving the same number of votes shall be printed on the ballots and placed on the voting machines. The candidates for the commission at an election held on the first Tuesday in June, equal in number to the places remaining to be filled in the commission, who receive the highest number of votes shall be declared elected. A tie between two or more candidates shall be decided by lot in the presence of such candidates and under the direction of the clerk.

History: En. Sec. 98, Ch. 121, L. 1923.

NOTE.—This section does not read the same as the section included in the 1923 session laws but conforms to the wording of the enrolled bill which was misprinted in the 1923 session laws.

Collateral References

Elections⇐172, 238.
29 C.J.S. Elections §§ 161, 163, 166, 244.

11-3540. (5520.100) **Removal of commissioners — recall petitions.** Any member of the commission may be removed from office by the electors of the municipality. The procedure for effecting such a removal shall be as follows:

Any elector of the municipality may make and file an affidavit with the clerk requesting that petition be issued demanding an election for the recall of any member of the commission. Any such affidavit shall state the name of the person whose removal from the commission is sought and the grounds alleged for such removal. Upon the filing of such an affidavit the clerk shall deliver to the elector making the affidavit copies of petition papers for demanding such an election, printed copies of which the clerk shall keep on file for distribution as herein provided. In issuing any such petition paper the clerk shall enter in a record to be kept in his office the name of the elector to whom issued, the date of issuance, the number of papers issued, and shall certify on each paper the name of the elector and the date of issuance. No petition paper shall be accepted as part of a petition unless it bear such certification of the clerk and unless filed as hereinafter provided.

History: **En. Sec. 99, Ch. 121, L. 1923.**

Collateral References

Municipal Corporations⇐159 (1).

62 C.J.S. Municipal Corporations § 510.

37 Am. Jur. 874, Municipal Corporations, § 247 et seq.

11-3541. (5520.101) **Recall petitions—signatures—filing—amendment.** A petition for a recall election to be effective must be returned and filed with the clerk within thirty days after the filing of the affidavit as provided in last preceding section, and to be sufficient must be signed by at least twenty per centum (20%) of the qualified electors of the municipality whose names appear on the official register of voters of the municipality on the date when such petition is returned and filed with the clerk. If any such petition is insufficient as originally filed it may be amended as provided in this act.

History: **En. Sec. 100, Ch. 121, L. 1923.**

11-3542. (5520.102) **Recall election—notice to officer whose removal sought—time for holding.** If a petition for a recall election, or an amended petition, shall be certified by the clerk to be sufficient, he shall at once submit it to the commission with his certificate to that effect and shall notify the member of the commission whose removal is sought of such action. Unless the member whose removal is sought resign within five days after such notice, the commission shall thereupon order and fix a day for holding a recall election. Any such election shall be held not less than ninety nor more than one hundred and twenty days after the petition has been presented to the commission and may be held at the same time as any other election held within such period; but, if no other election be held within such period, the commission shall call a special recall election to be held within the time aforesaid.

History: **En. Sec. 101, Ch. 121, L. 1923.**

11-3543. (5520.103) **Separate removals require separate petitions—nomination of successors.** The question of recalling any number of mem-

bers of the commission may be submitted at the same election, but as to each member whose removal is sought a separate petition shall be filed and provision shall be made for an entirely separate printed ballot. Candidates to succeed any person whose removal is sought shall be placed in nomination by petition signed, filed and verified as provided for nominating petitions for a municipal primary election; except that each petition paper shall specify that the candidate named therein is a candidate to succeed a particular person whose removal is sought.

History: En. Sec. 102, Ch. 121, L. 1923.

11-3544. (5520.104) **Recall elections — voting machines not used — form of ballots.** Voting machines shall not be used in recall elections, and the printed ballots shall be in form substantially as follows:

RECALL ELECTION
City and County of .....
(Month and day of month) 19....

SHALL (name of person) BE REMOVED FROM THE COMMISSION BY RECALL?

FOR THE RECALL OF
(Name of Person.)

AGAINST THE RECALL OF
(Name of Person.)

CANDIDATE
To succeed (name of person) if recalled. Vote for but one.

....
....
....

History: En. Sec. 103, Ch. 121, L. 1923.

11-3545. (5520.105) **Result of votes—removal—designation of successor.** If a majority of the votes cast on the question of recalling a member of the commission as hereinbefore provided be against his recall he shall continue in office for the remainder of his unexpired term, but subject to recall as before. If a majority of such votes be for the recall of such member he shall, regardless of any defect in the recall petition, be deemed removed from office. When a member is removed from the commission by recall the candidate to succeed such member who receives the highest number of votes shall succeed the member so removed for the unexpired term.

History: En. Sec. 104, Ch. 121, L. 1923.

11-3546. (5520.106) **Resignation pending recall election, result of.** If a person in regard to whom a recall petition is submitted to the commission shall resign from office after notice thereof no election shall be held and some eligible person shall be chosen by a majority vote of the remain-

ing members to fill the place for the unexpired term; but the member so resigning shall not be chosen by the commission to succeed himself.

History: En. Sec. 105, Ch. 121, L. 1923.

11-3547. (5520.107) **Limitation on filing recall petitions.** No recall petition shall be filed in respect to any member of the commission within three months after he takes office nor in case of a member subjected to a recall election and not removed thereby, until at least six months after that election.

History: En. Sec. 106, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⇐159 (1).
62 C.J.S. Municipal Corporations § 510.

11-3548. (5520.108) **Moneys received by officer in course of duty belong to municipality.** No person elected or appointed to any office or position under the municipal government established by this act shall be entitled to or receive for his own use any fees, emoluments, commissions or perquisites other than the salary or compensation fixed by this act or by the commission, and all such fees, emoluments, commissions and perquisites ensuing out of the performance of official duty shall belong to the municipality and be paid into the treasury thereof at the times and in the manner provided by the general laws of the state.

History: En. Sec. 107, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⇐162 (7).
62 C.J.S. Municipal Corporations §§ 522, 536.

11-3549. (5520.109) **Political participation by appointees forbidden.** No person holding an appointive office or position in the municipal government shall directly or indirectly solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription or contribution for any political party or purpose whatever. No person shall orally or by letter solicit, or be in any manner concerned in soliciting, any assessment, subscription or contribution for any political party or purpose from any person holding an appointive office or position in the municipal government. No person shall use or promise to use his influence or official authority to secure any appointment, or prospective appointment to any position in the service of the municipality as a reward or return for personal or partisan political service. No person shall take part in preparing any political assessment, subscription or contribution with the intent that it should be sent or presented to or collected from any person in the service of the municipality, nor shall he knowingly send or present directly or indirectly, in person or otherwise, any political assessment, subscription or contribution to, or request its payment by any person in such service.

History: En. Sec. 108, Ch. 121, L. 1923.

Collateral References

Elections⇐317.
29 C.J.S. Elections §§ 329, 356.

11-3550. (5520.110) **Penalizing appointees for not participating in politics forbidden—appointees not to act as officers of political organization or circulate petitions.** No person in the service of the municipality shall discharge, suspend, lay off, reduce in grade, or in any manner change

the official rank or compensation of any person in such service or threaten to do so, for withholding or neglecting to make any contribution of money or service or any valuable thing for any political service. No person holding an appointive office or place in the municipal government shall act as an officer in a political organization, or serve as a member of a committee of any such organization, or circulate or seek signatures for any petition provided for by primary or election laws.

History: En. Sec. 109, Ch. 121, L. 1923.

11-3551. (5520.111) **Penalty for violations.** Any person who, by himself or in co-operation with one or more persons, willfully or corruptly violates any of the provisions of sections 11-3549 and 11-3550 of this act shall be guilty of misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment for a term not exceeding three months, or by both such fine and imprisonment, and if he be an officer or employee of the municipality he shall immediately forfeit his office or employment.

History: En. Sec. 110, Ch. 121, L. 1923.

11-3552. (5520.112) **Commissioners not to hold other offices—forfeiture of office by commissioners and appointees on running for office.** No person elected to the commission shall, during the term for which elected, be appointed to any office or position in the service in the municipality. If a member of the commission shall become a candidate for any public office, other than that of commissioner, he shall immediately forfeit his place on the commission; and any appointive officer or employee of the municipality who shall become a candidate for nomination or election to any public office shall immediately forfeit the office or employment held under the municipality.

History: En. Sec. 111, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⇐142.
62 C.J.S. Municipal Corporations § 485.

11-3553. (5520.113) **Official bonds of officers—amounts—filing.** The members of the commission, the manager, the director of finance, the purchasing agent, the director of law, the director of police, and such other officers and employees of the municipality as the commission requires so to do, shall, immediately upon taking office, give bonds with such surety as may be approved by the commission; but no officer or employee shall become surety upon the official bond of another officer or employee. Members of the commission shall give bonds in the sum of five thousand dollars and other officers and employees shall give bonds in such amounts as the commission may require. The premium on all official bonds shall be paid by the municipality. All such bonds, except those of the manager and the director of finance, shall be filed with the director of finance. The official bonds of the manager and the director of finance shall be filed with and kept by the director of the department of law.

History: En. Sec. 112, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⇐145.
62 C.J.S. Municipal Corporations § 491.

11-3554. (5520.114) **Oath of office—taking and filing required.** Every officer of the municipality shall, before entering upon the duties of his office, take and subscribe to the oath or affirmation required of officers by the constitution of the state of Montana, which oath or affirmation shall be filed and kept in the office of the clerk.

History: En. Sec. 113, Ch. 121, L. 1923.

11-3555. (5520.115) **Financial interest by officers in contracts forbidden—penalty.** No officer or employee of the municipality shall have a financial interest direct or indirect, in any contract therewith, or be financially interested, directly or indirectly, in the sale to the municipality of any land, materials, supplies, or services except on behalf of the municipality as an officer or employee. Any willful violation of this section shall constitute malfeasance in office, and any officer or employee found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, actual or implied, of the person or corporation contracting with the municipality shall render the contract involved voidable by the manager or the commission.

History: En. Sec. 114, Ch. 121, L. 1923.

Collateral References

Municipal Corporations⇐151, 231 (1).

62 C.J.S. Municipal Corporations § 503; 63 C.J.S. Municipal Corporations § 988 et seq.

11-3556. (5520.116) **Existing contracts continued.** All contracts entered into by the county or by any city or town therein, or on behalf of any improvement district by such county or by any such city or town, prior to the election and qualification of a commission under this act, shall continue in full force and effect subsequently thereto. Public improvements, for which initial steps may have been taken under laws effective in the county prior to the election and qualification of a commission under this act, may thereafter be carried to completion in accordance with the provisions of such laws.

History: En. Sec. 115, Ch. 121, L. 1923.

11-3557. (5520.117) **Existing ordinances—order continuing and extending—publication—repeal of other ordinances.** The commission first elected may, at its first meeting, make an order that all existing ordinances and resolutions of some one city or town within the consolidated municipality, and which are of general application in such city or town, shall be continued in force and be extended throughout the consolidated municipality, and a copy of such order must be published at least once in each newspaper printed and published within the consolidated municipality within ten days after the making of such order. All other ordinances and resolutions of such city or town, and all ordinances of all other cities and towns within the consolidated municipality, save and except ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments, shall, upon the making of such order, be deemed repealed.

History: En. Sec. 116, Ch. 121, L. 1923.

11-3558. (5520.118) **Existing officers—how long continued in office.** The members of the board of county commissioners of the county and members of the council of every city and town therein, holding office on the date when any election is held at which the question of the consolidation and merging of the county and city and town governments is approved and adopted by the qualified electors of the county, shall continue in office and in the performance of their duties until the first commission shall have been elected have qualified, whereupon such board of county commissioners and city and town councils shall be deemed abolished. All other persons holding offices or positions, whether elective or appointive, under the government of such county, or under the government of any city or town therein, at the date of such election, shall continue in the performance of the duties of their respective offices and positions until provision shall be made by the commission for the performance or discontinuance of such duties, or the discontinuance of such offices or positions.

History: En. Sec. 117, Ch. 121, L. 1923.

11-3559. (5520.119) **Resolution declaring creation of consolidated government—effective date of merger—legal status.** At the first meeting of the commission whose members are first elected under the provisions of this act, such commission shall adopt a resolution reciting the filing of the petition provided for in section 11-3402, the ordering and holding of a special election as requested in such petition, the result of such election, and the holding of the special election for and the election of the members of the first commission, and the name and designation of the consolidated municipality, which resolution must be in duplicate, and signed by all of the members of the commission and also entered at length on the journal of the commission. One copy of such commission must be filed in the office of the clerk of the commission and the other copy thereof must be transmitted to and filed in the office of the secretary of state. Immediately upon the adoption of such resolution by the commission the separate corporate existence of the county and of each and every city and town therein shall be deemed to be consolidated and merged into one municipal corporation under the name selected, designated and adopted as provided in this act, and such consolidated municipality shall thereupon be deemed to have succeeded to, and to possess and own all of the property and assets of every kind and description and shall, save as herein otherwise provided, become responsible for all of the obligations and liabilities of the county, cities and towns so consolidated and merged. As a political subdivision of the state, such consolidated municipality shall have the status of a county, and for the purpose of representation in the legislative assembly, as provided by the constitution and laws of this state, and for all other purposes, it shall replace and be the successor of the county and shall be attached to the same judicial district.

History: En. Sec. 118, Ch. 121, L. 1923.

11-3560. (5520.120) **Transition of government—commissioners' powers.** The commission shall have power to make all necessary regulations, not inconsistent with this act, for the transition from the several governments of and within the county to the government provided by this act,

including the transfer to the treasury of the consolidated city and county of all funds and moneys of such several governments.

History: En. Sec. 119, Ch. 121, L. 1923.

CHAPTER 36

METROPOLITAN SANITARY DISTRICTS

(Repealed—Section 14, Chapter 185, Laws of 1957)

11-3601 to 11-3611. Repealed.

Repeal

These sections (Secs. 1 to 11, Ch. 292, L. 1947), relating to metropolitan sanitary districts, were repealed by Sec. 14, Ch. 185, Laws 1957. For new provisions see 16-4401 to 16-4413.

The repealing clause also contained a savings provision. It read: "Chapter 292, Laws of 1947, is hereby repealed, providing however, that any metropolitan sanitary sewer districts established under the provisions of chapter 292, Laws of 1947, shall be valid, and any obligations incurred thereunder shall in nowise be affected by the repeal of said chapter 292, Laws of 1947."

CHAPTER 37

OFF-STREET PARKING FACILITIES

Section 11-3701. Purpose of act.
11-3702. Definitions.
11-3703. Creation of parking commissions—revenue bonds.
11-3704. Members of commission—appointment—qualifications—vesting of commission powers—expenses and compensation—term of office—chairman—removal.
11-3705. Estimate and appropriation of money required—report of transactions to be filed.
11-3706. Inaction—suspension of commission.
11-3707. Commission a public body—powers specified.
11-3708. Acquisition of existing parking facilities—limitation.
11-3709. Lease—bids.
11-3710. Planning, zoning and building laws—co-operation of city officers and departments—payment in lieu of taxation.
11-3711. Revenue bonds—obligation of commission only.
11-3712. Types of bonds—sources from which payable.
11-3713. Authority to determine terms and conditions.
11-3714. Indenture for security of bonds.
11-3715. Additional clause in indenture—trustee for bondholders.
11-3716. Series or divisions of bonds.
11-3717. Interest on bonds—redemption.
11-3718. Signatures on bonds.
11-3719. Maturity dates.
11-3720. Sale of bonds—payment of interest—lien of bonds—temporary bonds—tax exemption—legal investments—refunding bonds.
11-3721. Funding or refunding bonds—negotiability.
11-3722. Rates, fees and charges—lien.
11-3723. Contracts—indenture—lease—incorporation by reference — rights of obligee.
11-3724. Default—rights of obligees.
11-3725. Property of commission exempt from execution—exception.

11-3701. Purpose of act. It is hereby determined and declared that excessive curb parking of motor vehicles in urban and metropolitan areas, and the lack of adequate off-street parking facilities in some cities, is against the public interest; and the purpose of this act is to provide means whereby cities, in which additional off-street parking facilities is considered necessary, may obtain and provide same.

History: En. Sec. 1, Ch. 223, L. 1951; amd. Sec. 1, Ch. 127, L. 1955.

Collateral References

Municipal Corporations⇐223, 860, 861.

63 C.J.S. Municipal Corporations § 958; 64 C.J.S. Municipal Corporations §§ 1844, 1845.

11-3702. Definitions. The following terms, wherever used or referred to in this act, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(a) "Commission" or "parking commission" shall mean any of the public corporations which may be created by section 11-3704 of this act.

(b) "The city" shall mean the particular city for which a particular commission may be created, or the legislative body which may act as such a commission.

(c) "Legislative body" shall mean, in the case of a city, the city council, or other body in which the general legislative powers of the city are vested.

(d) "Mayor" shall mean the mayor of the city or the officer thereof charged with the duties customarily imposed on the mayor or executive head of the city.

(e) "Clerk" shall mean the clerk of the city or the officer charged with the duties customarily imposed on such clerk.

(f) "Obligee of the commission" or "obligee" shall be any bondholder, trustee or trustees for any bondholders, or lessor demising to the commission property used in connection with a parking facility, or any assignee or assignees of such lessor's interest, or any part thereof, and the state, or the United States or any agency of either, when a party to any contract with a commission by which aid or a loan is given or made to the commission.

(g) "State public body" means the state, or any city, commission, or any other subdivision or public body of the state.

(h) "Project" shall mean any acquisition, improvement, construction, or undertaking of any kind authorized by this act.

(i) "Indenture" as used in this act means ordinance, resolution, or indenture which may be passed, adopted or entered into by a commission or by the legislative body of a city and "clause" includes article, section, subsection, paragraph, sentence or provision.

History: En. Sec. 2, Ch. 223, L. 1951.

Cross-Reference

Acquisition of parking areas by cities or towns, sec. 11-1018.

11-3703. Creation of parking commissions—revenue bonds. A city may create, as provided for in this section, a public body corporate and politic to be known as the "parking commission" of the city. The commission of any city shall not transact any business or exercise any powers under this act unless and until the legislative body of the city shall by resolution declare at any time hereafter that there is need for a parking commission to function in such city. The determination as to whether there is need for a commission to function may be made by the legislative body on its own motion or upon the filing of a petition signed by one hundred (100)

residents of the city, asserting that there is need for a commission to function in such city and requesting that the legislative body so declare.

In any suit, action or proceeding by or against or in any manner relating to a parking commission, the commission shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of a resolution by the legislative body declaring the need for the commission to function. A city shall not transact any business or exercise any powers of this act unless and until the legislative body of the city shall by resolution declare that there is need for such city to exercise the powers of a parking commission as provided in this act.

Either or both such resolutions may be adopted by the legislative body of a city. If both such resolutions are adopted they shall clearly specify areas within the city less than the whole thereof, within which, or projects over which, the commission and the city, respectively, are to have jurisdiction and control. The division of such jurisdiction and control shall be as so specified, but may be changed from time to time by action of both the legislative body and the commission, to such extent as may be consistent with obligations to bondholders assumed under this act.

The power to issue revenue bonds as provided in this act shall not be operative in any city until the legislative body, either at a general or a special election, shall submit to the electors, whose qualifications shall be the same as those required for voting at municipal elections in the city for elective officers thereof, the question as to whether the legislative body, or the commission, or both, shall be authorized to adopt the revenue bond method of financing projects provided for herein. Such question may be placed before the electors and notice thereof given in the same manner as provided by law for referring ordinances of the city to the electors. The provisions relating to the qualifications of electors and manner of submission of the question to the electors for the purposes of this act shall govern and be controlling, any provision of law to the contrary notwithstanding.

History: En. Sec. 3, Ch. 223, L. 1951; amd. Sec. 2, Ch. 127, L. 1955.

Collateral References

Municipal Corporations⇐911.

64 C.J.S. Municipal Corporations § 1908.

Maintenance of parking station. 37 Am. Jur. 752, Municipal Corporations, § 136.

Off-street public parking facilities. 8 ALR 2d 272.

Parking facilities, provision of, as exercise of governmental or proprietary function. 8 ALR 2d 397.

11-3704. Members of commission—appointment—qualifications—vesting of commission powers—expenses and compensation—term of office—chairman—removal. When the legislative body of a city first adopts a resolution declaring need for a parking commission to function, the mayor, with the approval of the legislative body, shall appoint five (5) electors of the city as members of the commission. The powers of each commission shall be vested in the members thereof then in office. Members shall receive their actual and necessary expenses, including traveling expenses and may receive such other compensation as the legislative body may prescribe.

Three of the members who are first appointed shall be designated to serve for terms of one, two, and three years, respectively, from the date of their appointments, and two shall be designated to serve for terms of four years from the date of their appointments. Thereafter members shall be appointed as aforesaid for a term of office of four years, except that all vacancies occurring during a term shall be filled for the unexpired term. A member shall hold office until his successor has been appointed and has qualified.

The appointing officer shall designate which of the members of the commission shall be the first chairman, but when the office of chairman of the commission becomes vacant thereafter, the commission shall elect a chairman from among its members. The term of office as chairman of the commission, unless otherwise prescribed by the legislative body of the city, shall be for the calendar year, or for that portion thereof remaining after each such chairman is designated or elected.

A member of a commission may be removed by the mayor with the consent of the legislative body of the city.

History: En. Sec. 4, Ch. 223, L. 1951.

62 C.J.S. Municipal Corporations § 468 et seq.

Collateral References

Municipal Corporations⇐124 (1-6).

11-3705. Estimate and appropriation of money required—report of transactions to be filed. When the commission created for any city becomes authorized to transact business and exercise its powers, the legislative body of the city may, subject to its fiscal law, at that time, and from time to time thereafter, make an estimate of the amount of money required for administrative purposes of the commission, and may appropriate such amounts to the commission as it deems necessary, subject to such conditions as the legislative body may prescribe.

Each such commission shall file with the legislative body a detailed report of all its transactions, including a statement of all revenues and expenditures, at quarterly, semiannual or annual intervals as the legislative body may prescribe and shall publish at least once annually in a newspaper of general circulation, published in the city, or if none is so published then in such newspaper of general circulation as the commission may deem most likely to give notice to the residents of the city, a statement of all its financial affairs, audited by independent certified public accountants.

History: En. Sec. 5, Ch. 223, L. 1951.

64 C.J.S. Municipal Corporations § 1885 et seq.

Collateral References

Municipal Corporations⇐885, 890.

11-3706. Inaction—suspension of commission. After the lapse of four years from the date of adoption of a resolution declaring the need for a parking commission to function in a city, if such commission shall not have acquired or entered into possession of land for a parking facility, or issued bonds, the legislative body of such city may by resolution declare that there is no need for such commission in the community. Thereupon the offices of the members of the commission shall become vacant and the capacity of the commission to transact business or exercise any powers

shall be suspended and shall remain suspended until the legislative body thereafter adopts a resolution declaring the need for the commission to function.

After adoption of a resolution declaring there is no need for such commission to function, or while any such resolution is in effect, the legislative body of a city shall have power to wind up the affairs of the commission and shall have title to all property of the commission for the purpose of off-street parking only, to be leased to, and operated by, companies, individuals or corporations.

The legislative body of a city, at any time after the activation of a parking commission, may adopt by a two-thirds vote thereof, a resolution transferring the property of the commission to the city and the city may, through such department as it may determine, exercise its powers in regard thereto by virtue of the constitution, or this or other general law, but no such transfer shall be made in contravention of any covenant or agreement made with the holders of any revenue bonds of the commission theretofore issued and then outstanding.

History: En. Sec. 6, Ch. 223, L. 1951.

11-3707. Commission a public body—powers specified. Each commission shall constitute a public body, corporate and politic, exercising public and essential governmental function, and subject to the limitations imposed by this act, shall have the following powers in addition to the others herein granted:

(a) To sue and be sued; to have a seal; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

(b) To make, and from time to time amend and repeal bylaws, rules and regulations not inconsistent with this act to carry into effect the powers and purposes thereof.

(c) To select and appoint or remove such officers, agents, counsel and employees, permanent and temporary, as it may require, and to determine their qualifications, duties and compensation. The powers of the commission under this subsection (c) shall be subject to all limitations and rights applicable to similar employment by the city, unless the legislative body, by resolution, shall otherwise determine.

(d) For the purpose of off-street parking, to purchase, lease, obtain option upon, acquire by gift, grant, bequest, devise or otherwise, any real or personal property, or any interest therein, together with any improvements thereon; to acquire by the exercise of the power of eminent domain any property in accordance with the applicable provisions of the law of eminent domain, except that no property of a state public body may be acquired without its consent, upon approval of the city council; to sell, lease, exchange, transfer, assign, or otherwise dispose of any real or personal property or any interest therein, provided such transactions are for off-street parking purposes; to lay out, open, extend, widen, straighten, establish, or change the grade, in whole or in part, of public parking facilities and public rights of way necessary or convenient therefor; to insure or provide for the insurance of any real or personal property or operations

of the commission against risks or hazards; to acquire, construct, rent, lease, maintain, and repair, such real and personal property, or any portion thereof either on behalf of the commission or as an agent of the city, including the leasing of the operation thereof, the leasing for incidental commercial purposes of surplus space or space which it is not economical to use for parking purposes, and as an incident to the operation of any parking facility, when in the judgment of the commission it is convenient or necessary to permit such use in order to utilize properly such land as a parking facility, provided that the city or parking commission shall be prohibited from operating any such additional, secondary and incidental facilities; provided, however, that such incidental use or uses must be secondary to the primary use as a parking facility, and in any event the portion of the land devoted to such incidental use or uses shall not exceed ten per cent of the surface area of such property, and if a building is erected on such property for the purpose of parking motor vehicles, then such incidental use or uses of such building shall not occupy more than ten per cent of the floor area; provided, further, that the commission or the city shall lease such space to private operators; to receive, control, and order the expenditure of, any and all moneys and funds pertaining to parking facilities or related properties, including, without limiting the generality of this provision, (i) all revenues derived from operations of the commission, (ii) all money appropriated or made available by the city pursuant to section 11-3707, or otherwise, (iii) the proceeds of all financial aid or assistance by the city, federal or state governments, (iv) the proceeds of assessments levied, (v) the proceeds of all revenue bonds issued pursuant to this act by the city for parking facilities.

(e) To invest any funds held in reserve or sinking funds or any funds not required for immediate disbursement in property or securities in which cities may legally invest funds subject to their control, but no such investment shall be made in contravention of any covenant or agreement made with the holders of any revenue bonds of the commission theretofore issued and then outstanding.

(f) To exercise all or any part or combination of the powers herein granted.

(g) To do and perform any and all other acts and things necessary, convenient, desirable or appropriate to carry out the provisions of this act.

History: En. Sec. 7, Ch. 223, L. 1951.

Collateral References

Municipal Corporations⇐167-169.
62 C.J.S. Municipal Corporations § 542.

11-3708. Acquisition of existing parking facilities—limitation. No existing parking facility shall be acquired by the exercise of the power of eminent domain by a commission or the city except after public hearing following notice of the date, time, place, and purpose of such hearing published once not less than ten nor more than twenty days prior to the date of such hearing; provided, however, that no property being used as a facility or facilities for the parking and/or storing of motor vehicles shall be acquired by a commission as heretofore provided by this act, unless the project to be furnished or constructed by a commission which necessitates

the acquisition of such parking facility or facilities will encompass an area of land and parking area not less than three (3) times the area of land and parking area encompassed by the existing parking facility.

History: En. Sec. 8, Ch. 223, L. 1951.

Off-street public parking facilities. 8 ALR 2d 373.

Collateral References

Eminent Domain⇐19.
29A C.J.S. Eminent Domain § 64 (2).

11-3709. Lease—bids. The commission or city may lease any project acquired by it under the provisions of this act to the highest responsible bidder after notice, which shall consist of the publication of a notice inviting bids, by two or more insertions thereof, not less than five (5) days apart, in a newspaper of general circulation printed and published in such city, or city and county, which publication shall be commenced not less than fifteen (15) days prior to the date set in the notice for the opening of bids; or if there be no newspaper of general circulation printed or published therein, by posting copies of said notice inviting bids in at least three (3) public places in the city, or city and county, not less than fifteen (15) days prior to the date set in the notice for the opening of bids. Such notice shall distinctly and specifically describe the project and the facilities in connection therewith which are to be leased, the period of time for which said project is to be leased and the minimum rental to be paid under such lease; provided if the commission or city shall by resolution entered upon its minutes find and determine that the purposes of this act will not be accomplished and the public interest will not be served by lease of any particular project for operation as a private parking project, the commission may lease such project to the city or the city may operate any such project itself as a municipal parking lot, subject to the ordinances, rules and regulations of the city pertaining to municipal parking lots.

History: En. Sec. 9, Ch. 223, L. 1951; amd. Sec. 3, Ch. 127, L. 1955.

11-3710. Planning, zoning and building laws—co-operation of city officers and departments—payment in lieu of taxation. All parking facilities of a commission shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the parking facility is situated. In the planning and location of any parking facility, a commission shall be subject to the relationship of the facility to any master plan or sections of a master plan for the development of the area in which the commission functions. In order that there may be no unnecessary duplication of effort or expense, the commission shall have access for the purposes of the commission to the services and facilities of the city planning department, the city engineer, the police department, the fire department and such other departments and offices of the city as may be appropriate therefor. The legislative body may in the resolution declaring need for a parking commission to function provide for a sum to be paid annually by the commission to the city, which shall not exceed the amount the commission would be required to pay in ad valorem taxes if it were a private entity owning the same property.

History: En. Sec. 10, Ch. 223, L. 1951.

62 C.J.S. Municipal Corporations § 226 (1) et seq.

Collateral References

Municipal Corporations⇐601 (3).

11-3711. Revenue bonds—obligation of commission only. The commission shall have power to issue revenue bonds in its name. These bonds shall constitute obligations of the commission only, and neither the payment of the principal or interest of any such bond constitutes a debt, liability or obligation of the city or of the state of Montana. All bonds issued by the commission shall contain a recital on their face that neither the payment of the principal or any part thereof nor any interest thereon constitutes a debt, liability or obligation of the city or of the state.

History: En. Sec. 11, Ch. 223, L. 1951.

11-3712. Types of bonds—sources from which payable. A commission may issue such types of revenue bonds as it may determine, including revenue bonds on which the principal and interest are payable: (a) Exclusively from the income and revenues of the parking facilities financed with the proceeds of such bonds, or with such proceeds together with financial assistance from the state or federal governments in aid of such projects; (b) exclusively from the income and revenues of certain designated parking facilities whether or not they were financed in whole or in part with the proceeds of such bonds; (c) from its revenues generally; (d) from any contributions or other financial assistance from the state or federal governments; (e) from parking meter revenues of the city which may be appropriated by the governing body of the city; or (f) by any combination of these methods. Any such bonds may be additionally secured by a pledge of any parking meter revenues. The legislative body of a city may pledge or allocate such parking meter revenues for periods of years for the financing or operation of any project authorized by this act and the payment of principal and interest on all or any revenue bonds issued and outstanding pursuant to this act, until all of such bonds have been fully paid.

History: En. Sec. 12, Ch. 223, L. 1951.

Collateral References

Municipal Corporations⇐923.

64 C.J.S. Municipal Corporations § 1935.

11-3713. Authority to determine terms and conditions. Each commission shall have power to determine, by resolution, with reference to each issue of revenue bonds to be issued under this act, all the terms and conditions of such bonds, and of the sale and issuance thereof, and any and all matters necessary or appropriate to be determined in connection therewith, excepting only as such power is limited by, or under the authority of, express provisions of this act. Without excluding the exercising of any other powers under, or in any way limiting the generality of, the preceding general grant of power, or in any way excluding or limiting the exercising of any or all other powers granted by this act, the general power granted by this section shall include, and each such commission shall have and in its discretion may exercise, the specific powers provided by this act.

History: En. Sec. 13, Ch. 223, L. 1951.

Collateral References

Off-street public parking facilities. 8 ALR 2d 373.

11-3714. Indenture for security of bonds. The commission may enter into indentures providing for the aggregate principal amount, date, or dates, maturities, interest rate, denominations, form, registration, transfer and interchange of such bonds and coupons, and the terms and conditions upon which the same shall be executed, issued, secured, sold, paid, redeemed, funded and refunded. Reference on the face of the bonds to such indenture by its date of adoption, or the apparent date on the face thereof, is sufficient to incorporate all of the provisions thereof into the body of the bonds and their appurtenant coupons. Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or detached from the bonds, has recourse to and is bound by all of the provisions of the indenture, to the extent that such provisions do not conflict with provisions stated in the bonds. An indenture pursuant to which bonds are issued may include such covenants and agreements on the part of the commission as the commission deems necessary or advisable for the better security of the bonds issued thereunder. An indenture may include any, or one, or all the following clauses relating to the bonds issued thereunder: Requiring the commission to pay or cause to be paid punctually the principal of all such bonds and the interest thereon on the date or dates at the place or places, and in the manner mentioned in such bonds and in the coupons appertaining thereto in accordance with such indenture; requiring the commission to make all repairs, renewals and replacements necessary to the operation of the project and to keep it at all times in good repair; requiring the commission to preserve and protect the security of the bonds and the rights of the holders thereof and to warrant and defend such rights; requiring the commission to pay and discharge or cause to be paid and discharged from the funds available for that purpose all lawful claims for labor, materials and supplies or other charges which, if unpaid, might become a lien or charge upon the revenues, or any part thereof, of any project acquired, constructed or completed from the proceeds of the sale of the bonds or from other proceeds or upon any of the physical properties thereof which might impair the security of the bonds; which limits, restricts, or prohibits any right, power or privilege of the commission to mortgage or otherwise encumber, sell, lease or dispose of any project constructed from the proceeds of the bonds or from other proceeds, or to enter into any lease or agreement which impairs or impedes the operation of such project, or any part thereof, necessary to secure adequate revenues or which otherwise impairs or impedes the rights of the holders of the bonds with respect to such revenues.

Requiring the commission to fix, prescribe and collect fees, tolls, rentals or other charges in connection with the services and facilities furnished from the project acquired, constructed or purchased from part or all of the proceeds of the bonds or from other proceeds, sufficient to pay the principal of and interest on the bonds as they become due and payable, together with all expenses of operation, maintenance and repair of the project, and with such additional sums as may be required for any sinking

fund, reserve fund or other special fund provided for the further security of such bonds or as a depreciation charge or other charge in connection with such project; requiring the commission to hold in trust the revenues pledged to the payment of such bonds and the interest thereon, or to any reserve or other fund created for the further protection of the bonds, and to apply such revenues or cause them to be applied only as provided in the indenture.

Limiting the power of the commission to apply the proceeds of the sale of any issue of bonds for the acquiring, constructing, or completing of any project or any part thereof, or more than one of such projects; limiting the power of the commission to issue additional revenue bonds for the purpose of acquiring, constructing or completing any improvement or any part thereof; requiring, specifying or limiting the kind, amount and character of insurance to be maintained by the commission on any project, or any part thereof, and the use and disposition of the proceeds of any such insurance thereafter collected; providing the events of default, and the terms and conditions upon which any or all of the bonds then or thereafter issued may become or be declared due and payable prior to maturity, and the terms and conditions upon which such declaration and its consequences may be waived.

Designating the rights, limitations, powers and duties arising upon breach by the commission of any of the covenants, conditions, or obligations contained in any indenture; prescribing a procedure by which certain specified terms and conditions of the indenture may be subsequently amended or modified with the consent of the commission and the vote or written assent of the holders of a specified principal amount of the bonds issued and outstanding. Such clause may provide for meetings of bondholders and for the manner in which the consent of the bondholders may be given. The clause shall specifically state the effect of such amendment or modification upon the rights of the holders of all of the bonds and interest coupons appertaining thereto, whether attached thereto or detached therefrom.

With respect to any clause providing for the modification or amendment of an indenture, the commission may agree that bonds held by the commission, by any department, political subdivision or agency of the state of Montana, or by any public corporation, municipality, district or political subdivision shall not be counted as outstanding bonds, or be entitled to vote or assent but shall nevertheless, be subject to any such modification or amendment.

History: En. Sec. 14, Ch. 223, L. 1951; amd. Sec. 11-107, Ch. 264, L. 1963.

Collateral References

Municipal Corporations⇐924-926.
64 C.J.S. Municipal Corporations § 1937.

11-3715. Additional clause in indenture — trustee for bondholders. The indenture may include a clause providing for such other acts and matters as may be necessary or convenient or desirable in order to secure the bonds or to make the bonds more marketable; the commission may designate a bank or trust company as a trustee for the holders of bonds issued hereunder, and may authorize the trustee to act on behalf of the

holders of the bonds, and to exercise and prosecute on behalf of the holders of the bonds such rights and remedies as may be available to the holders, and may fix and determine the conditions upon which any trustee shall receive, hold or disburse any or all revenues collected for or on account of the bondholders. The authority may prescribe the duties and powers of such trustee with respect to the payment of principal and interest on the bonds, the redemption of the bonds, the registration and discharge from registration of the bonds, and the management of any sinking fund or other funds provided as security for the bonds.

History: En. Sec. 15, Ch. 223, L. 1951.

11-3716. Series or divisions of bonds. The commission may issue revenue bonds in series or may divide any issue into one or two or more divisions and fix different maturities or dates of such bonds, different rates of interest, or prescribe different terms and conditions for the bonds of the several series or divisions. It is not necessary that all bonds of the same authorized issue be of the same kind or character, have the same security, or be of the same interest rate, but the terms thereof shall in each case be provided for by the commission, at or prior to the issue thereof. The commission may provide for successive issues or may provide for one maximum issue.

History: En. Sec. 16, Ch. 223, L. 1951.

11-3717. Interest on bonds—redemption. Revenue bonds shall bear interest at a rate of not to exceed six (6) per cent per annum, payable annually or semiannually or in part annually and in part semiannually. Prior to the issuance of bonds the commission may fix limitations or restrictions on the payment of interest. Bonds may be callable upon such terms, conditions, and upon such notice as the commission may determine, and upon the payment of the premium fixed by the commission in the proceedings for the issuance of the bonds. No bond is subject to call or redemption prior to its fixed maturity date unless the right to exercise such call is expressly stated on the face of the bond. The commission may provide for the payment of the principal and interest of bonds at any place within or without the state of Montana in specified coin or currency of the United States.

History: En. Sec. 17, Ch. 223, L. 1951.

Collateral References

Municipal Corporations⇐926.

64 C.J.S. Municipal Corporations § 1940.

11-3718. Signatures on bonds. All of the signatures on said bonds and on the interest coupons thereof may be printed, lithographed or engraved facsimile except the countersignature of the clerk or other officer of the commission designated by the commission which countersignature shall be manually affixed. If any of the officers whose signatures or countersignatures appear upon the bonds or coupons cease to be officers before delivery of the bonds or coupons, their signatures or countersignatures are nevertheless valid and of the same force and effect as if the officers had remained in office until the delivery of the bonds and coupons.

History: En. Sec. 18, Ch. 223, L. 1951.

11-3719. Maturity dates. Bonds shall bear dates prescribed by the commission. Bonds may be serial bonds or sinking fund bonds with such maturities as the commission may determine. No bond by its terms shall mature in more than forty (40) years from its own date and in the event any authorized issue is divided into two or more series or divisions, the maximum maturity date herein authorized shall be calculated from the date on the face of each bond separately, irrespective of the fact that different dates may be prescribed for the bonds of each separate series or division of any authorized issue.

History: En. Sec. 19, Ch. 223, L. 1951.

Collateral References

Municipal Corporations⇐951.
64 C.J.S. Municipal Corporations § 1954.

11-3720. Sale of bonds—payment of interest—lien of bonds—temporary bonds—tax exemption—legal investments—refunding bonds. The commission may fix terms and conditions for the sale or other disposition of any authorized issue of bonds. The commission may sell bonds at less than their par or face value but no bond may be sold at a price below the par or face value thereof which would result in a sale price yielding to the purchaser an average of more than six (6) per cent per annum, payable semiannually, according to standard tables of bond values. The commission may provide for the security of the bonds. Interest on bonds may be paid out of the proceeds of the sale of the bonds during the actual construction of any project for the acquisition, construction or completion of which the bonds have been issued, and for a period of not to exceed two (2) years thereafter as provided for in the indenture. The commission may provide in the proceedings for the issuance of bonds that the bonds and the interest thereon constitute such lien upon the revenues of any project acquired, constructed or completed from the proceeds thereof as may be provided for in the indenture. Pending the actual issuance or delivery of revenue bonds, the commission may issue temporary or interim bonds, certificates or receipts of any denomination whatsoever, and with or without coupons, to be exchanged for definitive bonds when ready for delivery. All such revenue bonds, and the interest or income therefrom, are exempt from all taxation in this state, other than gift, inheritance and estate taxes. All bonds issued under this act shall be legal investments for both public and private funds. The commission may provide for the issuance, sale, or exchange of refunding bonds for the purpose of redeeming or retiring any revenue bonds issued by the commission. All provisions of this act applicable to the issuance of revenue bonds are applicable to the funding or refunding bonds and to the issuance, sale or exchange thereof.

History: En. Sec. 20, Ch. 223, L. 1951.

Collateral References

Municipal Corporations⇐921 (1), 937, 939; Taxation⇐218; Trusts⇐217 (3).

64 C.J.S. Municipal Corporations §§ 1930, 1956; 84 C.J.S. Taxation § 260; 90 C.J.S. Trusts § 325.

11-3721. Funding or refunding bonds—negotiability. Funding or refunding bonds may be issued in a principal amount sufficient to provide funds for the payment of all bonds to be funded or refunded thereby, and in addition for the payment of all expenses incident to the calling, retiring

or paying of such outstanding bonds, and the issuance of such funding or refunding bonds. These expenses include the difference in amount between the par value of the funding or refunding bonds and any amount less than par for which the funding or refunding bonds are sold, any amount necessary to be made available for the payment of interest upon such funding or refunding bonds from the date of sale thereof to date of payment of the bonds to be funded or refunded or to the date upon which the bonds to be funded or refunded will be paid pursuant to the call thereof or agreement with the holders thereof, and the premium, if any, necessary to be paid in order to call or retire the outstanding bonds and the interest accruing thereon to the date of the call or retirement. All bonds issued under the provisions of this act shall be fully negotiable, as provided by the Uniform Commercial Code—Investment Securities.

History: En. Sec. 21, Ch. 223, L. 1951; amd. Sec. 11-108, Ch. 264, L. 1963.

Collateral References

Municipal Corporations⇐938.

64 C.J.S. Municipal Corporations § 1950.

11-3722. Rates, fees and charges—lien. The commission shall fix the rates, fees, and all other charges to be made for all projects, services or facilities furnished, acquired, constructed or completed under this act for the use thereof by any persons or public or private agencies utilizing such projects, services or facilities. Subject to such contractual obligations as may be entered into by the commission and the holders of the revenue bonds issued under this act, the commission is authorized to change such rates, charges and fees from time to time as conditions warrant. All rates, fees and charges shall be at all times fixed to yield annual revenue which together with other revenue shall be equal to annual operating and maintenance expenses including insurance costs and all redemption payments and interest charges on the revenue bonds at any time issued and outstanding in connection with the project of which such facilities are a part as the same become due. The commission may provide that bond redemption and the interest payment shall constitute a first, direct and exclusive charge and lien on all such fees, and charges and other revenues and interest thereon and sinking funds created therefrom received from the use and operation of the project for the acquisition, construction or completion of which such revenue bonds were issued, and all such fees and charges and other revenues, together with the interest thereon shall constitute a trust fund for the security and payment of such bonds and shall not be used or pledged for any other purpose so long as such bonds, or any of them, are outstanding and unpaid. The commission may provide that the rates, fees and charges established are minimum rates, fees, and charges and subject to increase or decrease in accordance only with the terms of the indenture under which the revenue bonds were issued.

History: En. Sec. 22, Ch. 223, L. 1951.

11-3723. Contracts — indenture — lease — incorporation by reference — rights of obligee. Every contract entered into by the commission for the use of any project or the services or facilities thereof, acquired, constructed or completed from the proceeds of the sale of revenue bonds shall incorporate by reference the provisions of any indenture pursuant to

which the bonds were issued. Every such contract or lease shall also refer to the provisions of this act with respect to the obligation of the commission to fix fees and charges to meet the payments provided for in this act and in the proceedings for the issuance of revenue bonds and all payments required to be made to the commission under such contract shall be subject to increase if and when the commission is required to increase rates or charges to meet its obligations hereunder and under any indenture providing for the issuance of bonds. An obligee of a commission shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(a) (To Compel Performance of Contract.) By mandamus, suit, action or proceeding at law or in equity to compel said commission and the members, officers, agents, or employees thereof to perform each and every term, provision, and covenant contained in any contract of said commission with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of said commission and the fulfillment of all duties imposed upon said commission by this act.

(b) (To Enjoin Unlawful Acts.) By suit, action or proceeding in equity, to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of said commission.

History: En. Sec. 23, Ch. 223, L. 1951.

11-3724. Default—rights of obligees. A commission shall have power by its resolution, trust indenture, mortgage, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, the right (in addition to all rights that may otherwise be conferred), upon the happening of an event or default as defined in such resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

(a) To cause possession of any parking facility or any part thereof to be surrendered to any such obligee.

(b) To obtain the appointment of a receiver of any parking facility of said commission or any part thereof and of the rents and profits therefrom. If such receiver be appointed, he may enter and take possession of such parking facility or any part thereof and operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom, and shall keep such moneys in separate account or accounts and apply the same in accordance with the obligations of said commission as the court shall direct.

(c) To require said commission and the members and employees thereof to account as if it and they were the trustees of an express trust.

History: En. Sec. 24, Ch. 223, L. 1951.

Collateral References

Municipal Corporations⇐937, 939.
64 C.J.S. Municipal Corporations § 1956.

11-3725. Property of commission exempt from execution—exception. All real property of a commission shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall

issue against the same nor shall any judgment against a commission be a charge or lien upon its real property; provided, however, that the provisions of this section shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage, deed of trust or other encumbrance of a commission or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by a commission on its rents, fees, or revenues.

History: En. Sec. 25, Ch. 223, L. 1951.

CHAPTER 38

CITY OR CITY-COUNTY PLANNING BOARDS

Section 11-3801. City planning boards or city-county planning boards authorized—purpose of act.
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11-3845. Regulations governing procedure for application or approval of plats.
11-3846. Approval or disapproval of application for plat.
11-3847. Fees.

11-3848. Filing and recording of plat involving lands covered by master plan and ordinance without effect unless approved by city council.
11-3849. Repealed.
11-3850. Repealed.
11-3851. Appeals.
11-3852. Repealed.
11-3853. Act not to prevent recovery and use of mineral or forest or agricultural resources.
11-3854. Repealed.
11-3855. Validation of prior zoning ordinances, rules and regulations.
11-3856 to 11-3858. Repealed.

11-3801. City planning boards or city-county planning boards authorized—purpose of act. The governing body of any city or the governing bodies of any two or more cities and the county in which such city or cities are located jointly may create a planning board in order to promote the orderly development of its governmental units and its environs. It is the object of this legislation to encourage local units of government to improve the present health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end that highway systems be carefully planned, that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the community be commensurate with and promotive of the efficient and economical use of public funds.

In accomplishing this objective, it is the intent of this legislation that the planning board shall serve in an advisory capacity to presently established boards and officials.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963.

Collateral References

Municipal Corporations⇐41.
62 C.J.S. Municipal Corporations § 83.

Cross-Reference

Building regulations, appointment of zoning commission, 11-2701 et seq.

DECISIONS UNDER FORMER LAW

Constitutionality

The former provision in this section "that additional powers be granted legislative bodies of cities and counties" was invalid, in so far as it applied to counties, as an unconstitutional attempt to delegate legislative powers to counties in violation of section 1, article IV, of the Montana constitution. Plath v. Hi-Ball Contractors, Inc., 139 M 263, 362 P 2d 1021, 1025.

11-3802. Existence and actions of existing boards. Upon the taking effect of this act, a planning board heretofore established shall continue to operate as though authorized under the terms of the present act. All actions lawfully taken under prior acts or ordinances are hereby validated and continued in effect until amended or repealed by action taken under the authority of this act.

History: En. Sec. 2, Ch. 246, L. 1957.

11-3803. Definitions. As used in this act:

1. "City" includes incorporated cities and towns.

2. "City council" means the chief legislative body of a city or incorporated town.

3. "Planning board" means a city planning board or a joint city-county planning board.

4. "Master plan" means a comprehensive development plan or any of its parts such as a plan of land use and zoning, of thoroughfares, or sanitation, of recreation, and other related matters. The plan may propose ordinances or resolutions for possible adoption by the appropriate governing body.

5. "Public place" means any tract owned by the state or its subdivisions.

6. "Mayor" means mayor of a city.

7. "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.

8. "Units of government" means any federal, state, regional, county, city or town.

9. "Utility" means any facility used in rendering service which the public has a right to demand.

10. "Person" means individual firm, or corporation.

11. "Governing body or governing bodies" means the governing body of any governmental unit represented on a planning board.

12. "Plat" means a subdivision of land into lots, streets and areas, marked upon the earth and represented on paper; and includes re-plats or amended plats.

History: En. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963.

11-3804. City planning board. A city planning board shall consist of not less than seven (7) members to be appointed as follows:

a. One (1) member to be appointed by the city council from its membership;

b. One (1) member to be appointed by the city council who may in the discretion of the city council be an employee or hold public office in the city or county in which the city is located;

c. One (1) member to be appointed by the mayor upon the designation by the county commissioners of the county in which the city is located;

d. Four (4) citizen members to be appointed by the mayor, two (2) of whom shall be resident freeholders within the urban area, if any, outside of the city limits over which the planning board has jurisdiction under this act and two (2) of whom shall be resident freeholders within the city limits. Such citizen members shall hold no other office in the city government.

History: En. Sec. 4, Ch. 246, L. 1957; amd. Sec. 1, Ch. 271, L. 1959.

11-3805. Intention of city to create planning board—county to decide whether to create city-county board or permit city board. Prior to enacting an ordinance creating a city planning board, the city council shall notify in writing, the county commissioners of the county in which the city is located of their intention to form a city planning board.

The board of county commissioners shall elect to form a city-county planning board or to permit the city to form a city planning board and shall notify in writing the city council of its election within thirty (30) days from receipt of notice of the city's intention to form a planning board. In the event the county commissioners so elect the planning board so to be formed shall be a city-county planning board.

History: En. Sec. 5, Ch. 246, L. 1957.

11-3806. Member of council to serve on city planning board—term—vacancies. As soon as the city council has enacted an ordinance creating a city planning board, the city council shall select a member of its body to serve on the planning board. The term of the appointed member shall be coextensive with the term of office to which he has been elected or appointed, unless the council, on its first regular meeting of each year, appoints another to serve as its representative or unless his term is terminated as hereinafter provided.

The city council shall fill any vacancy occurring in its respective membership on the planning board.

History: En. Sec. 6, Ch. 246, L. 1957.

11-3807. Appointments—certification. The clerk of the city council shall certify members appointed by its body. The certificates shall be sent to and become a part of the records of the planning board. The mayor shall make similar certification for the appointment of citizen members.

History: En. Sec. 7, Ch. 246, L. 1957.

11-3808. Citizen members—qualifications. The citizen members shall be qualified by knowledge and experience in matters pertaining to the development of the city and shall hold no other office in the city government and shall be resident freeholders of such city or jurisdictional area as defined in section 11-3830, R. C. M. 1947.

History: En. Sec. 8, Ch. 246, L. 1957; amd. Sec. 3, Ch. 247, L. 1963.

11-3809. Repealed—Chapter 271, Laws of 1959.

Repeal

This section (Sec. 9, Ch. 246, L. 1957), relating to the terms of citizen members of the board, was repealed by Sec. 8, Ch. 271, Laws 1959.

11-3810. City-county planning boards — members — term of officer members and citizen members. 1. A city-county planning board shall consist of not less than nine (9) members to be appointed as follows:

a. Two (2) official members to be appointed by the board of county commissioners who may in the discretion of the board of county commissioners be employed by or hold public office in the county.

b. Two (2) official members to be appointed by the city council who may in the discretion of the city council be employed by or hold public office in the city.

c. Two (2) citizen members to be appointed by the mayor of the city.

d. Two (2) citizen members to be appointed by the board of county

commissioners. The two (2) members may reside outside the city limits but within the jurisdictional area of the planning board.

e. The ninth member shall be selected by the eight (8) officers and citizen members hereinabove provided for with the consent and approval of the board of county commissioners and the city council.

2. The terms of the members who are officers of any governmental unit represented on the board shall be coextensive with their respective terms of office to which they have been elected or appointed; the terms of the other members shall be two (2) years, except that the terms of the first members appointed shall be fixed by agreement and rule of the governing bodies represented on the board for one (1) or two (2) years in order that a minimum number of terms shall expire in any year.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965.

11-3811. Vacancies. Vacancies occurring on the board of official members, and by death or resignation of citizen members, shall be filled by the governing bodies having appointed them for the unexpired term.

Vacancies occurring in citizen members on the board at the end of a term shall be filled alternately by the mayor and the board of county commissioners represented on the board, commencing with the mayor. In the event more than one (1) city is represented on a board the representation and appointments to be made by the respective cities and counties shall be by agreement and rule of the board.

History: En. Sec. 11, Ch. 246, L. 1957.

11-3812. Citizen members of city-county board—qualifications. The citizen members of the city-county planning board shall be resident freeholders in the area over which the planning board has jurisdiction, provided, however, that at least two (2) of such members shall be resident freeholders in the area, if any, outside the city limits over which the planning board has jurisdiction.

History: En. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959.

Compiler's Note

The beginning of the amending section correctly identified this section as the one to be amended; however, in setting out the section as amended there was an obvious clerical error as it was set out as "11-3182." The reference should have read "11-3812."

11-3813. Removal of citizen appointee. Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee.

History: En. Sec. 13, Ch. 246, L. 1957; amd. Sec. 5, Ch. 247, L. 1963.

11-3814. County representative for city planning board. As soon as a city council has enacted an ordinance creating a city planning board, the board of county commissioners of the county wherein the city is located shall within forty-five (45) days designate a representative of the county, which representative may be a member of the board of county commissioners or an officeholder or employee of the county, to the mayor of the

city for appointment of the city planning board; in the event of the failure of the county to so designate such member, the mayor may appoint a person of his own choosing and at his sole discretion as a representative of the county.

History: En. Sec. 14, Ch. 246, L. 1957.

11-3815. Representation of additional cities, towns, or county on existing boards. Any city, county, or town, or any combination thereof wishing to be represented upon an existing planning board, may by agreement of the governing body or bodies then represented upon the board, obtain representation thereon and share in the membership duties and costs of the board upon a basis agreeable to the governing body or bodies creating the board.

The membership of any board may be increased to provide for representation of any additional cities, counties, or towns seeking representation thereon.

History: En. Sec. 15, Ch. 246, L. 1957.

11-3816. Meetings. The board shall fix the time for holding regular meetings, but it shall meet at least once in the months of January, April, July, and October.

History: En. Sec. 16, Ch. 246, L. 1957.

11-3817. Special meetings. Special meetings of the planning board may be called by the president or by two (2) members upon written request to the secretary. The secretary shall send to all members, at least two (2) days in advance of a special meeting, a written notice fixing the time and place of the meeting.

Written notice of a special meeting is not required if the time of the special meeting has been fixed in a regular meeting, or if all members are present at the special meeting.

History: En. Sec. 17, Ch. 246, L. 1957.

11-3818. Quorum—official action. A majority of members shall constitute a quorum; no action of the planning board is official, however, unless authorized by a majority of members of the board at a regular or properly called special meeting.

History: En. Sec. 18, Ch. 246, L. 1957;
amd. Sec. 6, Ch. 247, L. 1963.

11-3819. Members not to receive salary. The members of the planning board shall receive no salary for services on the planning board.

History: En. Sec. 19, Ch. 246, L. 1957.

11-3820. Expenses while attending conferences in another city, county, or state. When the planning board determines that it is necessary for members or employees to attend, in another city, county or state a regional or national conference or interview dealing with planning or related problems, the planning board may pay the actual expenses of the

attending members or employee provided the amount has been made available in the board's appropriation.

History: En. Sec. 20, Ch. 246, L. 1957; amd. Sec. 7, Ch. 247, L. 1963.

11-3821. President and vice-president. At its first regular meeting in each year, the board shall elect from its members a president and vice-president. The vice-president shall have authority to act as president of the board during the absence or disability of the president.

History: En. Sec. 21, Ch. 246, L. 1957.

11-3822. Secretary—contracts for services. The board may appoint and prescribe the duties and fix the compensation of a secretary, and such employees as are necessary for the discharge of the duties and responsibilities of the board.

The board may make contracts for special or temporary services and any professional services.

History: En. Sec. 22, Ch. 246, L. 1957.

11-3823. Offices. The city or county shall provide suitable offices for the holding of meetings and the preservation of plans, maps, documents, and accounts.

History: En. Sec. 23, Ch. 246, L. 1957.

11-3824. Powers and duties. To effectuate the purpose of this act, the board shall have the power and duty to:

1. Exercise general supervision of and make regulations for the administration of the affairs of the board.

2. Prescribe uniform rules pertaining to investigations and hearings.

3. Supervise the fiscal affairs and responsibilities of the board.

4. Prescribe the qualifications of, appoint, remove, and fix the compensation of the employees of the board, and delegate to employees authority to perform ministerial acts in all cases except where final action of the board is necessary.

5. Keep an accurate and complete record of all departmental proceedings; record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the board.

6. Make recommendations and an annual report to any governing bodies represented on the board concerning the operation of the board and the status of planning within its jurisdiction.

7. Prepare, publish, and distribute reports, proposed ordinances and proposed resolutions and other material relating to the activities authorized under this act.

8. Prepare and submit to the governing bodies represented on the board an annual budget in the same manner as other departments of the city and county governments and shall be limited in all expenditures to

the provisions made therefor by the governing bodies represented upon the board.

History: En. Sec. 24, Ch. 246, L. 1957; amd. Sec. 8, Ch. 247, L. 1963.

Collateral References

Injunction⚖89; Municipal Corporations⚖601 (1).

43 C.J.S. Injunctions § 123; 62 C.J.S. Municipal Corporations § 226 (1).

DECISIONS UNDER FORMER LAW

Constitutionality

The provisions of former sections 11-3852 and 11-3854 authorizing county commissioners to exercise building and zoning regulatory powers were invalid as an unconstitutional attempt to delegate legislative powers to counties in violation of section 1, article IV of the Montana constitution. Plath v. Hi-Ball Contractors, Inc., 139 M 263, 362 P 2d 1021, 1025.

11-3825. Funds for operation—tax levy authority. 1. After a city council has by ordinance or a city council and board of county commissioners have, by ordinance and resolution, created a planning board, the governing bodies represented upon such board may appropriate funds to carry out the duties of the planning board.

2. When a planning board has been created by agreement of more than one (1) governmental unit, the governing bodies of the governmental units which have created the board shall agree upon the proportion of expenditures to be borne by each such unit and may budget and appropriate the funds necessary for the respective shares thus agreed upon.

3. The governing body of any city or town represented upon a planning board may levy a tax upon the property located within such city or town not to exceed one (1) mill for planning board purposes, under procedures set forth in Title 11, chapter 14, R. C. M. 1947.

4. When a city-county planning board has been established, the board of county commissioners may create a planning district which shall include that property within the jurisdictional area as established pursuant to section 11-3830, which lies outside the limits of any incorporated cities and towns; and the board of county commissioners may levy on all property located within such planning district a tax not to exceed one (1) mill for planning board purposes, under procedures set forth in Title 16, chapter 19, R. C. M. 1947.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963.

11-3826. Authority to expend money. The planning board shall have authority to expend, under regular city or county procedure as provided by law, all sums appropriated to it for purposes and activities authorized by this act.

History: En. Sec. 26, Ch. 246, L. 1957.

11-3827. Power to accept and use gifts and donations—special nonreverting fund—federal and state aid. A city, county or city-county planning board organized pursuant to the provisions of this title, is hereby empowered and given the right to accept, receive, take, hold, own and possess any gift, donation, grant, devise or bequest, or any property, real, personal or mixed, or any improved or unimproved park or playground,

and utilize, hold, or dispose of the same for planning purposes, not inconsistent with the provisions of this act. Any moneys so accepted shall be deposited with the city or county in a special nonreverting planning board fund to be available for expenditures by the planning board for the purpose designated by the donor. The disbursing officer of a city or county shall draw warrants against such special nonreverting fund only upon vouchers signed by the president and secretary of the planning board. Upon approval of the governing bodies represented on the board, a planning board may accept, receive, and expend funds, grants, and services from the federal government or its agencies and instrumentalities of state or local government, or its agencies and instrumentalities of state or local government, or from civic sources and contract with respect thereto, and provide such information and reports as may be necessary to secure such financial aid.

History: En. Sec. 27, Ch. 246, L. 1957; amd. Sec. 1, Ch. 133, L. 1965.

11-3828. Master plan—policies. 1. To assure the promotion of public health, safety, morals, convenience, order, or the general welfare and for the sake of efficiency and economy in the process of community development, the planning board shall prepare a master plan and shall serve in an advisory capacity to the local governing bodies establishing the planning board.

2. The planning board may also propose policies for:

a. subdivision plats.

b. the development of public ways, public places, public structures; and public and private utilities.

c. the issuance of improvement location permits on platted and unplatted lands.

d. the laying out and development of public ways and services to platted and unplatted lands.

3. The city council may in its discretion require the city-county planning board to function as the zoning commission authorized under section 11-2706, R. C. M. 1947.

4. The governing bodies of the city or county shall give consideration to recommendations of the city-county planning board but the governing bodies shall not be bound by such recommendations.

History: En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963.

11-3829. Departments and officials to supply information and documents requested in connection with preparation of master plan. Whenever the board undertakes the preparation of a master plan, the departments and officials of state, city, county, and separate taxing units operating within lands under the jurisdiction of the board shall make available, upon the request of the board, such information, documents, and plans as have been prepared or upon the request of the board shall provide such information as relates to the board's activity.

History: En. Sec. 29, Ch. 246, L. 1957.

11-3830. Jurisdictional area. 1. The governing bodies represented on a city-county planning board shall by separate resolution establish the jurisdictional area of the planning board. The jurisdictional area shall include the area within the incorporated limits of the city and such contiguous unincorporated area outside the city as, in the judgment of the respective governing bodies, bears reasonable relation to the development of the city. The jurisdictional area shall not extend more than four and one-half (4½) miles beyond the limits of any city within the jurisdictional area.

2. The planning board, after approval of the jurisdictional area by the governing bodies, shall file in the office of the clerk and recorder a map showing the boundaries of the jurisdictional area. The boundaries may be revised from time to time by resolutions of the governing bodies. Such revised boundaries shall be shown upon a map which shall be filed as provided in this section. The area included in such map shall constitute the area over which the planning board shall have advisory jurisdiction.

3. In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved, with the approval of their respective governing bodies, and a map showing the boundary lines so agreed upon and approved shall be filed as provided in this section, and thereafter shall fix the limit of territorial jurisdiction of the respective planning boards.

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963.

DECISIONS UNDER FORMER LAW

Constitutionality

The former provisions empowering city-county planning boards to develop and exercise complete discretion in developing master plans for contiguous unincorporated areas surrounding cities within a radius of twelve miles of such cities were invalid as an unconstitutional attempt to delegate legislative powers to counties in violation of section 1, article IV of the Montana constitution. Plath v. Hi-Ball Contractors, Inc., 139 M 263, 362 P 2d 1021, 1025.

11-3830.1. Planning projects outside jurisdictional area—broad construction. Any city-county planning board organized pursuant to the provisions of Title 11, chapter 38, R. C. M. 1947, is hereby empowered, if requested by the board of county commissioners, to conduct specific planning projects within the county, and outside of the jurisdictional area of said city-county planning board as defined in section 11-3830, R. C. M. 1947. Such authority to conduct specific planning projects outside of the jurisdictional area of the city-county planning board upon request of the board of county commissioners shall be broadly construed so as to enable the county to qualify under the provisions of and regulations governing any planning assistance program administered by any agency of the United States of America or the state of Montana.

History: En. Sec. 1, Ch. 190, L. 1965.

Compiler's Note

Sections 11-3809, 11-3832, 11-3835 to 11-3839, 11-3841, 11-3849, 11-3850, 11-3852, 11-3854, 11-3856 to 11-3858, contained in the reference to Title 11, Chapter 38, referred to in this section, have been repealed. Sections 11-3809, 11-3841, 11-3849 and 11-3850 were repealed by Sec. 8, Ch.

271, Laws 1959. Section 11-3852 was repealed by Sec. 12, Ch. 246, Laws 1963. Sections 11-3832, 11-3835 to 11-3839, and 11-3856 to 11-3858 were repealed by Sec. 26, Ch. 247, Laws 1963. Section 11-3854 was repealed by Sec. 12, Ch. 246, Laws 1963 and Sec. 26, Ch. 247, Laws 1963.

11-3831. Master plan—contents. The planning board shall prepare and propose a master plan for the jurisdictional area, which plan may include;

1. Careful and comprehensive surveys and studies of existing conditions and the probable future growth of the city and its environs or of the county.

2. Maps, plats, charts, and descriptive material presenting basic information, locations, extent and character of any of the following:

a. History, population, and physical site conditions;

b. Land use, including the height, area, bulk, location and use of private and public structures and premises;

c. Population densities;

d. Community centers and neighborhood units;

e. Blighted and slum areas;

f. Streets and highways, including bridges, viaducts, subways, parkways, alleys, and other public ways and places;

g. Sewers, sanitation, and drainage, including handling, treatment, and disposal of excess drainage waters, sewage, garbage, refuse, and other wastes;

h. Flood control and prevention;

i. Public and private utilities, including water, light, heat, communication, and other services;

j. Transportation, including rail, bus, truck, air, and water transport, and their terminal facilities;

k. Local mass transit, including motor and trolley bus, street, elevated or underground railways, and taxicabs;

l. Parks and recreation, including parks, playgrounds, reservations, forests, wildlife refuges, and other public grounds, spaces, and facilities of a recreational nature;

m. Public buildings and institutions, including governmental administration and service buildings, hospitals, infirmaries, clinics, penal and correctional institutions, and other civic and social service buildings;

n. Education, including location and extent of schools, colleges, and universities;

o. Land utilization, including areas for manufacturing, and industrial uses, concentration of wholesale, retail business, and other commercial uses, residential, and areas for mixed uses;

p. Conservation of water, soil, agricultural, and mineral resources;

q. Any other factors which are a part of the physical, economic, or social situation within the city or county.

3. Reports, maps, charts, and recommendations setting forth plans for the development, redevelopment, improvement, extension, and revision of the subjects and physical situations of the city or county set out in part 2 of this section so as to substantially accomplish the object of this legislation as set out in section 11-3801.

4. A long-range development program of public works' projects, based on the recommended plans of the planning board, for the purpose of eliminating unplanned, unsightly, untimely, and extravagant projects and with a view to stabilizing industry and employment, and the keeping of such program up-to-date, for all separate taxing units within the city or county, respectively, for the purpose of assuring efficient and economic use of public funds.

History: En. Sec. 31, Ch. 246, L. 1957; amd. Sec. 12, Ch. 247, L. 1963.

11-3832. Repealed—Chapter 247, Laws of 1963.

Repeal

This section (Sec. 32, Ch. 246, L. 1957), relating to amended or additional plans for streets and highways, was repealed by Sec. 26, Ch. 247, Laws 1963.

11-3833. Notice of hearing prior to adoption of master plan. 1. Prior to the submission of the proposed master plan to the governing bodies, the board shall give notice and hold a public hearing on the plan.

2. At least ten (10) days prior to the date set for hearing, the board shall publish in a newspaper of general circulation in the jurisdictional area a notice of the time and place of the hearing.

History: En. Sec. 33, Ch. 246, L. 1957; amd. Sec. 13, Ch. 247, L. 1963.

References

Plath v. Hi-Ball Contractors, Inc., 139 M 263, 362 P 2d 1021, 1025.

11-3834. Resolution adopting master plan and recommending ordinance. After consideration of the recommendations and suggestions elicited at the public hearing, the planning board shall by resolution recommend the proposed master plan and any proposed ordinances and resolutions for its implementation to the governing bodies of the governmental units represented on the board.

History: En. Sec. 34, Ch. 246, L. 1957; amd. Sec. 14, Ch. 247, L. 1963.

11-3835 to 11-3839. Repealed—Chapter 247, Laws of 1963.

Repeal

These sections (Secs. 35 to 39, Ch. 246, L. 1957), relating to adoption of master plans by planning boards, action thereon by governing bodies, and amendments subsequent to adoption, were repealed by Sec. 26, Ch. 247, Laws 1963.

11-3840. Adoption of master plan—policy and pattern of development. The governing bodies shall adopt, revise or reject such proposed plan or any of its parts. After adoption of the master plan the city council, the board of county commissioners, or other governing body within the territorial jurisdiction of the board shall be guided by and give consideration to the general policy and pattern of development set out in the master plan in the:

1. Authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

2. Authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities;

3. Adoption of subdivision controls;

4. Adoption of zoning ordinances or resolutions.

History: En. Sec. 40, Ch. 246, L. 1957; amd. Sec. 15, Ch. 247, L. 1963.

11-3841. Repealed—Chapter 271, Laws of 1959.

Repeal

This section (Sec. 41, Ch. 246, L. 1957), relating to the control over plats, was repealed by Sec. 8, Ch. 271, Laws 1959.

11-3842. Plats of subdivisions — approval by planning board. 1. Where a master plan has been approved, the city council may by ordinance require subdivision plats to conform to the provisions of the master plan. Certified copies of such ordinance shall be filed with the city or town clerk and with the county clerk and recorder of the county.

2. Thereafter a plat involving lands within the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board which shall make a report to the city council advising as to compliance or noncompliance of the plat with the master plan. The city council shall have the final authority to approve the filing of such plat.

3. Nothing herein contained shall be interpreted to limit the present powers of the city or county governments, but shall be an additional requirement before any plat may be filed of record or entitled to be recorded.

History: En Sec. 42, Ch. 246, L. 1957; amd. Sec. 4, Ch. 271, L. 1959; amd. Sec. 16, Ch. 247, L. 1963.

11-3843. Application for approval of plat. 1. A person desiring the approval of a plat involving lands within the corporate limits of the city and covered by said master plan shall submit a written application for a certificate together with a copy of the proposed plat to the planning board having jurisdiction.

2. When the board tentatively finds that the application conforms to the requirements of the master plan or subdivision ordinance, it shall set a date for a hearing, notify the applicant in writing, and notify by general publication or otherwise any person or governmental unit having a probable interest in the proposed plat.

History: En. Sec. 43, Ch. 246, L. 1957; amd. Sec. 17, Ch. 247, L. 1963.

11-3844. Determination of whether application for approval should be granted. In determining whether an application for approval shall be recommended, the board shall determine if the plat provides for:

1. Co-ordination of subdivision streets with existing and planned streets or highways.

2. Co-ordination with an extension of facilities included in the master plan.

3. Establishment of minimum width, depth, and area of lots within the projected subdivision.

4. Fair allocations of areas for streets, parks, and utilities.

History: En. Sec. 44, Ch. 246, L. 1957; amd. Sec. 18, Ch. 247, L. 1963.

11-3845. Regulations governing procedure for application or approval of plats. The planning board shall adopt and publish written regulations governing the procedure for application for approval of plats of the lands within its advisory jurisdiction.

History: En. Sec. 45, Ch. 246, L. 1957; amd. Sec. 19, Ch. 247, L. 1963.

11-3846. Approval or disapproval of application for plat. After hearing and within forty-five (45) days after application for approval of the plat, the board shall recommend approval or disapproval to the city council. If the board recommends disapproval, it shall set forth its reasons in a communication to the city council and provide the applicant with a copy.

History: En. Sec. 46, Ch. 246, L. 1957; amd. Sec. 20, Ch. 247, L. 1963.

11-3847. Fees. The city council shall establish a uniform schedule of fees proportioned to the cost of checking and verifying the proposed plats. An applicant shall pay the specified fee at the time of filing his application. These fees shall be credited to a fund established by the governing bodies for the planning board.

History: En. Sec. 47, Ch. 246, L. 1957; amd. Sec. 21, Ch. 247, L. 1963.

11-3848. Filing and recording of plat involving lands covered by master plan and ordinance without effect unless approved by city council. After a master plan and an ordinance containing provisions for subdivision control and the approval of plats have been adopted and a certified copy of the ordinance has been filed with the county clerk and recorder, the filing and recording of a plat involving lands within the corporate limits of the city and covered by such master plan and ordinance shall be without legal effect unless approved by the city council.

History: En. Sec. 48, Ch. 246, L. 1957; amd. Sec. 22, Ch. 247, L. 1963.

11-3849. Repealed—Chapter 271, Laws of 1959.

Repeal

This section (Sec. 49, Ch. 246, L. 1957), relating to the conformance of structures to the master plan and ordinance, was repealed by Sec. 8, Ch. 271, Laws 1959.

11-3850. Repealed—Chapter 271, Laws of 1959.

Repeal

This section (Sec. 50, Ch. 246, L. 1957), relating to the issuance of improvement location permits, was repealed by Sec. 8, Ch. 271, Laws 1959.

11-3851. Appeals. A decision of a city council rejecting a proposed subdivision plat may be reviewed by the district court upon application

for a writ of certiorari. The application shall specify the grounds upon which it alleges the illegality of the action of the city council.

History: En. Sec. 51, Ch. 246, L. 1957; amd. Sec. 23, Ch. 247, L. 1963.

11-3852. Repealed—Chapter 246, Laws of 1963.

Repeal

This section (Sec. 52, Ch. 246, L. 1957; Sec. 5, Ch. 271, L. 1959), granting zoning powers to city councils and boards of county commissioners, was repealed by Sec. 12, Ch. 246, Laws 1963.

11-3853. Act not to prevent recovery and use of mineral or forest or agricultural resources. Nothing in this act shall be deemed to authorize an ordinance, resolution, rule, or regulation which would prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

History: En. Sec. 53, Ch. 246, L. 1957; amd. Sec. 6, Ch. 271, L. 1959.

11-3854. Repealed—Chapter 246, Laws of 1963; Chapter 247, Laws of 1963.

Repeal

This section (Sec. 54, Ch. 246, L. 1957; Sec. 7, Ch. 271, L. 1959), granting zoning commission powers to planning boards, was repealed by Sec. 12, Ch. 246, Laws 1963, and by Sec. 26, Ch. 247, Laws 1963.

11-3855. Validation of prior zoning ordinances, rules and regulations. All zoning ordinances or resolutions and rules and regulations and all amendments, supplements, and changes thereto legally adopted under any prior enabling act and all actions taken under the authority of any such ordinances or resolutions, are hereby validated and continued in effect, until amended or repealed by action of the governing bodies taken under the authority of this act.

History: En. Sec. 55, Ch. 246, L. 1957; amd. Sec. 24, Ch. 247, L. 1963.

Saving Clause

Section 25 of Ch. 247, Laws 1963 read "Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act."

11-3856 to 11-3858. Repealed—Chapter 247, Laws of 1963.

Repeal

These sections (Secs. 56 to 58, Ch. 246, L. 1957), relating to enforcement of zoning ordinances and to the termination of zoning district provisions, were repealed by Sec. 26, Ch. 247, Laws 1963.

CHAPTER 39

URBAN RENEWAL LAW

Section 11-3901. Definitions.
11-3902. Findings and declarations of necessity.
11-3903. Encouragement of private enterprise.
11-3904. Workable program.
11-3905. Finding of necessity by local governing body.
11-3906. Preparation and approval of urban renewal projects and urban renewal plans.
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11-3908. Eminent domain.
11-3909. Disposal of property in urban renewal area.

11-3910. Issuance of bonds.
11-3911. Bonds as legal investments.
11-3912. Property exempt from taxes and from levy and sale by virtue of an execution.
11-3913. Co-operation by public bodies.
11-3914. Title of purchaser.
11-3915. Exercise of powers in carrying out urban renewal project.
11-3916. Urban renewal agency.
11-3917. Prohibition against discrimination.
11-3918. Interested public officials, commissioners, or employees.
11-3919. Separability—act controlling.
11-3920. Short title.

11-3901. Definitions. The following terms wherever used or referred to in this act, shall have the following meanings, unless a different meaning clearly indicated by the context:

(a) "Agency" or "urban renewal agency" shall mean a public agency created by section 11-3916.

(b) "Blighted area" shall mean an area which, by reason of the substantial physical dilapidation, deterioration, defective construction, material, and arrangement and/or age obsolescence of buildings or improvements, whether residential or nonresidential, inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality; inappropriate or mixed uses of land or buildings; high density of population and overcrowding; defective or inadequate street layout; faulty lot layout in relation to size, adequacy, accessibility or usefulness; excessive land coverage; insanitary or unsafe conditions; deterioration of site; diversity of ownership; tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; improper subdivision or obsolete platting; or the existence of conditions which endanger life or property by fire or other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime; substantially impairs or arrests the sound growth of the city or its environs, retards the provision of housing accommodations or constitutes an economic or social liability, and/or is detrimental, or constitutes a menace, to the public health, safety, welfare, and morals in its present condition and use.

(c) "Bonds" shall mean any bonds, notes, or debentures (including refunding obligations) herein authorized to be issued.

(d) "Clerk" shall mean the clerk or other official of the municipality who is the custodian of the official records of such municipality.

(e) "Federal government" shall include the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(f) "Local governing body" shall mean the council or other legislative body charged with governing the municipality.

(g) "Mayor" shall mean the chief executive of a city or town.

(h) "Municipality" shall mean any incorporated city or town in the state.

(i) "Obligee" shall include any bondholder, agent or trustees for any bondholders, or lessor demising to the municipality property used in connection with an urban renewal project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the municipality.

(j) "Person" shall mean any individual, firm, partnership, corporation, company, association, joint stock association, or school district; and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity.

(k) "Public body" shall mean the state or any municipality, township, board, commission, district, or any other subdivision or public body of the state.

(l) "Public officer" shall mean any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality.

(m) "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, right and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise.

(n) "Redevelopment" may include (1) acquisition of a blighted area or portion thereof; (2) demolition and removal of buildings and improvements; (3) installation, construction or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this act in accordance with the urban renewal plan, and (4) making the land available for development or redevelopment by private enterprise or public agencies (including sale, initial leasing, or retention by the municipality itself) at its fair value for uses in accordance with the urban renewal plan.

(o) "Rehabilitation" may include the restoration and renewal of a blighted area or portion thereof, in accordance with an urban renewal plan, by (1) carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements; (2) acquisition of real property and demolition or removal of buildings and improvements thereon where necessary to eliminate unhealthful, insanitary or unsafe conditions, lessen density, reduce traffic hazards, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities; (3) installation, construction or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this act; and (4) the disposition of any property acquired in such urban renewal area (including sale, initial leasing, or retention by the municipality itself) at its fair value for uses in accordance with such urban renewal plan.

(p) "Urban renewal area" means a blighted area which the local governing body designates as appropriate for an urban renewal project or projects.

(q) "Urban renewal plan" means a plan, as it exists from time to time, for an urban renewal project, which plan (1) shall conform to the comprehensive plan or parts thereof for the municipality as a whole; and (2) shall be sufficiently complete to indicate such land acquisition, demolition, and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum densities, building requirements, and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

(r) "Urban renewal project" may include undertakings or activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of blight, and may involve redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan.

History: En. Sec. 1, Ch. 195, L. 1959.

Collateral References

Health⇐14, 32.
39 C.J.S. Health § 22 (c).
42 Am. Jur. 779, Public Housing Laws, §§ 2, 4, 7.

Constitutionality, construction, and application of statutes or governmental projects for improvement of housing conditions (slum clearance), 130 ALR 1069; 172 ALR 966.

Validity, construction, and effect of statutes providing for urban redevelopment by private enterprise. 44 ALR 2d 1414.

11-3902. Findings and declarations of necessity. It is hereby found and declared that blighted areas which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state exist in municipalities of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime and depreciation of property values, constitutes an economic and social liability, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, aggravates traffic problems and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of such areas is a matter of state policy and state concern in order that the state and its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, are conducive to fires, are difficult to police and to provide police protection for, and, while contributing little to the tax income of the state and its municipalities, consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization and other forms of public protection, services, and facilities.

It is further found and declared that certain of such areas, or portions thereof, may require acquisition, clearance, and disposition subject to use restrictions, as provided in this act, since the prevailing condition of decay may make impracticable the reclamation of the area by rehabilitation; that other areas or portions thereof may, through the means provided in this act, be susceptible of rehabilitation in such a manner that the con-

ditions and evils hereinbefore enumerated may be eliminated, remedied or prevented; and that to the extent feasible salvable blighted areas should be rehabilitated through voluntary action and the regulatory process.

It is further found and declared that the powers conferred by this act are for public uses and purposes for which public money may be expended and the power of eminent domain exercised; and that the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination.

History: En. Sec. 2, Ch. 195, L. 1959.

11-3903. Encouragement of private enterprise. A municipality, to the greatest extent it determines to be feasible in carrying out the provisions of this act, shall afford maximum opportunity, consistent with the sound needs of the municipality as a whole, to the rehabilitation or redevelopment of the urban renewal area by private enterprise. A municipality shall give consideration to this objective in exercising its powers under this act, including the formulation of a workable program, the approval of urban renewal plans (consistent with the comprehensive plan or parts thereof for the municipality), the exercise of its zoning powers, the enforcement of other laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements, the disposition of any property acquired, and the provision of necessary public improvements.

History: En. Sec. 3, Ch. 195, L. 1959.

11-3904. Workable program. A municipality for the purposes of this act may formulate a workable program for utilizing appropriate private and public resources to eliminate, and prevent the development or spread of, blighted areas, to encourage needed urban rehabilitation, to provide for the redevelopment of such areas, or to undertake such of the aforesaid activities, or other feasible municipal activities as may be suitably employed to achieve the objectives of such workable program. Such workable program may include, without limitation, provision for; the prevention of the spread of blight into areas of the municipality which are free from blight through diligent enforcement of housing, zoning, and occupancy controls and standards; the rehabilitation of blighted areas or portions thereof by replanning, removing congestion, providing parks, playgrounds and other public improvements, by encouraging voluntary rehabilitation and by compelling the repair and rehabilitation of deteriorated or deteriorating structures; and the clearance and redevelopment of blighted areas or portions thereof.

History: En. Sec. 4, Ch. 195, L. 1959.

11-3905. Finding of necessity by local governing body. No municipality shall exercise any of the powers hereafter conferred upon municipalities by this act until after its local governing body shall have adopted a resolution finding that: (1) one or more blighted areas exist in such municipality; and (2) the rehabilitation, redevelopment, or a combination

thereof, of such area or areas is necessary in the interest of the public health, safety, morals, or welfare of the residents of such municipality.

History: En. Sec. 5, Ch. 195, L. 1959; amd. Sec. 1, Ch. 38, L. 1965.

11-3906. Preparation and approval of urban renewal projects and urban renewal plans. (a) A municipality shall not approve an urban renewal project for an urban renewal area unless the local governing body has, by resolution, determined such area to be a blighted area and designated such area as appropriate for an urban renewal project. The local governing body shall not approve an urban renewal plan until a comprehensive plan or parts of such plan for an area which would include an urban renewal area for the municipality have been prepared. For this purpose and other municipal purposes, authority is hereby vested in every municipality to prepare, to adopt, and to revise from time to time, a comprehensive plan or parts thereof for the physical development of the municipality as a whole (giving due regard to the environs and metropolitan surroundings), to establish and maintain a planning commission for such purpose and related municipal planning activities, and to make available and to appropriate necessary funds therefor. A municipality shall not acquire real property for an urban renewal project unless the local governing body has approved the urban renewal project plan in accordance with subsection (d) hereof.

(b) The municipality may itself prepare or cause to be prepared an urban renewal plan, or any person or agency, public or private, may submit such a plan to the municipality. Prior to its approval of an urban renewal project, the local governing body shall submit such plan to the planning commission of the municipality for review and recommendations as to its conformity with the comprehensive plan or parts thereof for the development of the municipality as a whole. The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the local governing body within sixty (60) days after receipt of it. Upon receipt of the recommendations of the planning commission, or if no recommendations are received within said sixty (60) days, then without such recommendations, the local governing body may proceed with the hearing on the proposed urban renewal project plan prescribed by subsection (c) hereof.

(c) The local governing body shall hold a public hearing on an urban renewal plan after public notice thereof. Such notice shall be given by publication once each week for two consecutive weeks not less than ten (10) nor more than thirty (30) days prior to the date of the hearing in a newspaper having a general circulation in the urban renewal area of the municipality and by mailing a notice of such hearing not less than ten (10) days prior to the date of the hearing to the persons whose names appear on the county treasurer's tax roll as the owner or reputed owner of the property, at the address shown on the tax roll. The notice shall describe the time, date, place, and purpose of the hearing, shall generally identify the urban renewal area affected, and shall outline the general scope of the urban renewal plan under consideration.

(d) Following such hearing, the local governing body may approve an urban renewal project if it finds that (1) a workable and feasible plan exists for making available adequate housing for the persons who may be displaced by the project; (2) the urban renewal plan conforms to the comprehensive plan or parts thereof for the municipality as a whole; (3) the urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise; and (4) that a sound and adequate financial program exists for the financing of said project.

Provided, that the local governing body must find the urban renewal project area to be blighted area as defined in section 11-3901.

(e) An urban renewal project plan may be modified at any time by the local governing body: Provided, that if modified after the lease or sale by the municipality of real property in the urban renewal project area, such modification shall be subject to such rights at law or in equity as a lessee or purchaser, or his successor or successors in interest may be entitled to assert.

(f) Upon the approval of an urban renewal project by a municipality, the provisions of the urban renewal plan with respect to the future use and building requirements applicable to the property covered by said plan shall be controlling with respect thereto.

(g) Upon the approval of an urban renewal project by a municipality the plan shall be submitted to a vote of the taxpayers of such municipality and shall be approved by a majority of those taxpayers voting on such question. If the plan or any subsequent modification thereof involves financing by the issuance of general obligation bonds of the municipality as authorized in section 11-3913, subsection (c), or the financing of water or sewer improvements by the issuance of revenue bonds under the provisions of Title 11, chapter 24, or of sections 11-2217 to 11-2221, inclusive, the question of approving the plan and issuing such bonds shall be submitted to a vote of the taxpayers of such municipality in accordance with the provisions of sections 11-2308 to 11-2310, inclusive, at the same election and shall be approved by a majority of those taxpayers voting on such question. Aiding in the planning, undertaking or carrying out of an urban renewal project approved in accordance with this section shall be deemed a single purpose for the issuance of general obligation bonds, and the proceeds of such bonds authorized for any such project may be used to finance the exercise of any and all powers conferred upon the municipality by section 11-3907 which are necessary or proper to complete such project in accordance with the approved plan and any modification thereof duly adopted by the local governing body. Sections 11-2306 and 11-2307 shall not be applicable to the issuance of such bonds.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965.

11-3907. Powers. Every municipality shall have all the power necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

(a) To undertake and carry out urban renewal projects within the municipality, to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this act, and to disseminate blight clearance and urban renewal information.

(b) To provide or to arrange or contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets or roads in connection with an urban renewal project; to install, construct, and reconstruct, streets, utilities, parks, playgrounds, and other public improvements; and to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of an urban renewal project, and to include in any contract let in connection with such a project, provisions to fulfill such of said conditions as it may deem reasonable and appropriate.

(c) Within the municipality, to enter upon any building or property in any urban renewal area, in order to make surveys and appraisals, provided that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain, or otherwise, any real property and such personal property as may be necessary for the administration of the provisions herein contained, together with any improvements thereon; to hold, improve, clear, or prepare for redevelopment any such property; to dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums on any such insurance; provided, however, that no statutory provision with respect to the acquisition, clearance, or disposition of property by public bodies shall restrict a municipality in the exercise of such functions with respect to an urban renewal project.

(d) To invest any urban renewal project funds held in reserves or sinking funds or any such funds which are not required for immediate disbursement, in property or securities in which mutual savings banks may legally invest funds subject to their control; to redeem such bonds as have been issued pursuant to section 11-3910 at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be canceled.

(e) To borrow money and to apply for, and accept, advances, loans, grants, contributions and any other form of financial assistance from the federal government, the state, county, or other public body, or from any sources, public or private, for the purposes of this act, and to enter into and carry out contracts in connection therewith. A municipality may include in any application or contract for financial assistance with the federal government for an urban renewal project such conditions imposed pursuant to federal laws as the municipality may deem reasonable and appropriate and which are not inconsistent with the purposes of this act.

(f) Within the municipality, to make or have made all plans necessary to the carrying out of the purposes of this act and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify, and amend such plans. Such plans may include, without limitation: (1) a comprehensive plan or parts thereof for the locality as a whole, (2) urban renewal plans, (3) plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements, (4) plans for the enforcement of state and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements, and (5) appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects. The municipality is authorized to develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of urban blight and to apply for, accept, and utilize grants of, funds from the federal government for such purposes.

(g) To prepare plans for the relocation of families displaced from an urban renewal area, and to make relocation payments and to co-ordinate public and private agencies in such relocation, including requesting such assistance for this purpose as is available from other private and governmental agencies, both for the municipality and other parties.

(h) To appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this act, and in accordance with state law; (1) levy taxes and assessments for such purposes; (2) acquire land by negotiation and/or eminent domain; (3) close, vacate, plan, or replan streets, roads, sidewalks, ways, or other places; (4) plan or replan, zone or rezone any part of the municipality; (5) adopt annual budgets for the operation of an urban renewal agency, department, or offices vested with urban renewal project powers under section 11-3915; (6) enter into agreements with such agencies or departments (which agreements may extend over any period) respecting action to be taken by such municipality pursuant to any of the powers granted by this act.

(i) Within the municipality, to organize, co-ordinate, and direct the administration of the provisions of this act as they apply to such municipality in order that the objective of remedying blighted areas and preventing the causes thereof within such municipality may be most effectively promoted and achieved, and to establish such new office or offices of the municipality or to reorganize existing offices in order to carry out such purpose most effectively.

(j) To exercise all or any part or combination of powers herein granted.

(k) Nothing in this act shall be construed to authorize any municipality to construct or operate, as a part of any urban renewal project, any electric generation plant, electric transmission or distribution lines or other public utility facilities excepting water and sewer lines then operated by municipalities.

History: En. Sec. 7, Ch. 195, L. 1959.

11-3908. Eminent domain. A municipality shall have the right to acquire by condemnation, any interest in real property, which it may deem necessary for an urban renewal project under this act after the adoption by the local governing body of a resolution declaring that the acquisition of the real property described therein is necessary for such purpose. Condemnation for urban renewal of blighted areas is declared to be a public use, and property already devoted to any other public use or acquired by the owner or his predecessor in interest by eminent domain may be condemned for the purposes of this act.

The award of compensation for real property taken for such a project shall not be increased by reason of any increase in the value of the real property caused by the assembly, clearance, or reconstruction, or proposed assembly, clearance, or reconstruction in the project area. No allowance shall be made for the improvements begun on real property after notice to the owner of such property of the institution of proceedings to condemn such property. Evidence shall be admissible bearing upon the insanitary, unsafe, or substandard condition of the premises, or the unlawful use thereof.

History: En. Sec. 8, Ch. 195, L. 1959.

Cross-Reference
Eminent domain, sec. 93-9901 et seq.

11-3909. Disposal of property in urban renewal area. (a) A municipality may sell, lease, or otherwise transfer real property or any interest therein acquired by it for an urban renewal project, in an urban renewal area for residential, recreational, commercial, industrial, or other uses or for public use, and may enter into contracts with respect thereto, or may retain such property or interest only for parks and recreation, education, public transportation, public safety, health, highways, streets, and alleys, administrative buildings, or civic centers, in accordance with the urban renewal project plan, subject to such covenants, conditions, and restrictions, including covenants running with the land, as it may deem to be necessary or desirable to assist in preventing the development or spread of blighted areas or otherwise to carry out the purposes of this act. Provided, that such sale, lease, other transfer, or retention, and any agreement relating thereto, may be made only after the approval of the urban renewal plan by the local governing body. The purchasers or lessees and their successors and assigns shall be obligated to devote such real property only to the uses specified in the urban renewal plan, and may be obligated to comply with such other requirements as the municipality may determine to be in the public interest, including the obligation to begin, within a reasonable time, any improvements on such real property required by the urban renewal plan. Such real property or interest shall be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban renewal plan. In determining the fair value of real property for uses in accordance with the urban renewal plan, a municipality shall take into account, and give consideration to, the uses provided in such plan; the restrictions upon, and the covenants, conditions, and obligations assumed by, the purchaser or lessee or by the municipality retaining the property; and the objectives of such plan for the prevention of the recurrence of blighted areas. The municipality in any

instrument of conveyance to a private purchaser or lessee may provide that such purchaser or lessee shall be without power to sell, lease, or otherwise transfer the real property without the prior written consent of the municipality until he has completed the construction of any and all improvements which he has obligated himself to construct thereon. Real property acquired by a municipality which, in accordance with the provisions of the urban renewal plan, is to be transferred, shall be transferred as rapidly as feasible, in the public interest, consistent with the carrying out of the provisions of the urban renewal plan. The inclusion in any such contract or conveyance to a purchaser or lessee of any such covenants, restrictions, or conditions (including the incorporation by reference therein of the provisions of an urban renewal plan or any part thereof) shall not prevent the recording of such contract or conveyance in the land records of the clerk and recorder or the county in which such city or town is located, in such manner as to afford actual or constructive notice thereof.

(b) A municipality may dispose of real property in an urban renewal area to private persons only under such reasonable competitive bidding procedures as it shall prescribe or as hereinafter provided in this subsection. A municipality may, by public notice by publication once each week for three consecutive weeks in a newspaper having a general circulation in the community, prior to the execution of any contract or deed to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section, invite bids from, and make available all pertinent information to, private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban renewal area, or any part thereof. Such notice shall identify the area, or portion thereof and shall state that such further information as is available may be obtained at such office as shall be designated in said notice. The municipality shall consider all redevelopment or rehabilitation bids and the financial and legal ability of the persons making such bids to carry them out. The municipality may accept such bids as it deems to be in the public interest and in furtherance of the purposes of this act. Thereafter, the municipality may execute, in accordance with the provisions of subsection (a), and deliver contracts, deeds, leases, and other instruments of transfer.

(c) A municipality may operate and maintain real property acquired in an urban renewal area pending the disposition of the property for redevelopment, without regard to the provisions of subsection (a) above, for such uses and purposes as may be deemed desirable even though not in conformity with the urban renewal plan. Provided, however, that the municipality may, after a public hearing, extend the time for a period not to exceed three years.

History: En. Sec. 9, Ch. 195, L. 1959.

11-3910. Issuance of bonds. (a) A municipality shall have the power to issue bonds from time to time in its discretion to finance the undertaking of any urban renewal project under this act, including, without limiting the generality thereof, the payment of principal and interest

upon any advances for surveys and plans for urban renewal projects, and shall also have power to issue refunding bonds for the payment or retirement of such bonds previously issued by it. Such bonds shall not pledge the general credit of the municipality and shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality derived from, or held in connection with, its undertaking and carrying out of urban renewal projects under this act; provided, however, that payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source, in aid of any urban renewal projects of the municipality under this act.

(b) Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall be subject only to the provisions of the Uniform Commercial Code. Bonds issued under the provisions of this act are declared to be issued for an essential public and governmental purpose, and, together with interest thereon and income therefrom, shall be exempted from all taxes.

(c) Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, not exceeding six per centum (6%) per annum, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics, as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto.

(d) Such bonds may be sold at not less than ninety-eight per cent (98%) of par at public or private sale, or may be exchanged for other bonds on the basis of par: Provided, that such bonds may be sold to the federal government at private sale at not less than par and, in the event less than all of the authorized principal amount of such bonds is sold to the federal government, the balance may be sold at public or private sale at not less than ninety-eight per cent (98%) of par at an interest cost to the municipality of not to exceed the interest cost to the municipality of the portion of the bonds sold to the federal government.

(e) The municipality may annually pay into a fund to be established for the benefit of such bonds any and all excess of the taxes received by it from the same property over and above the average of the annual taxes authorized without vote for a five-year period immediately preceding the acquisition of the property by the municipality for renewal purposes, such payment to continue until such time as all bonds payable from the fund are paid in full. Any other taxing unit in a municipality is authorized to allocate a like amount of such excess taxes to the municipality or municipalities in which it is situated.

(f) In case any of the public officials of the municipality whose signatures appear on any bonds or coupons issued under this act shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this act shall be fully negotiable.

(g) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this act or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with an urban renewal project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with the provisions of this act.

History: En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963.

11-3911. Bonds as legal investments. All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking or investment business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, curators, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a municipality pursuant to this act: provided, that such bonds and other obligations shall be secured by an agreement between the issuer and the federal government in which the issuer agrees to borrow from the federal government and the federal government agrees to lend to the issuer, prior to the maturity of such bonds or other obligations, moneys in an amount which (together with any other moneys irrevocably committed to the payment of interest on such bonds or other obligations) will suffice to pay the principal of such bonds or other obligations with interest to maturity thereon, which moneys under the terms of said agreement are required to be used for the purpose of paying the principal of, and the interest on, such bonds or other obligations at their maturity. Such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions, and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

History: En. Sec. 11, Ch. 195, L. 1959.

11-3912. Property exempt from taxes and from levy and sale by virtue of an execution. (a) All property of a municipality, including funds, owned or held by it for the purposes of this act, shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall judgment against

a municipality be a charge or lien upon such property; provided, however, that the provisions of this section shall not apply to, or limit the right of, obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this act by a municipality on its rents, fees, grants, or revenues from urban renewal projects.

(b) The property of a municipality, acquired or held for the purposes of this act, is declared to be public property used for essential public and governmental purposes and such property shall be exempt from all taxes of the municipality, the county, the state, or any political subdivision thereof: provided, that such tax exemption shall terminate when the municipality sells, leases, or otherwise disposes of such property in an urban renewal area to a purchaser or lessee which is not a public body or other organization normally entitled to tax exemption with respect to such property.

History: En. Sec. 12, Ch. 195, L. 1959.

11-3913. Co-operation by public bodies. (a) For the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project located within the area in which it is authorized to act, any public body authorized by law or by this act, may, upon such terms, with or without consideration, as it may determine: (1) dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or other rights or privileges therein to a municipality; (2) incur the entire expense of any public improvements made by such public body, in exercising the powers granted in this section; (3) do any and all things necessary to aid or co-operate in the planning or carrying out of an urban renewal plan; (4) lend, grant, or contribute funds to a municipality; (5) enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a municipality or other public body respecting action to be taken pursuant to any of the powers granted by this act, including the furnishing of funds or other assistance in connection with an urban renewal project, and (6) cause public buildings and public facilities, including parks, playgrounds, recreational, community, educational, water, sewer, or drainage facilities, or any other works which it is otherwise empowered to undertake to be furnished; furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways, or other places; plan or replan, zone or rezone any part of the urban renewal area; and provide such administrative and other services as may be deemed requisite to the efficient exercise of the powers herein granted.

(b) Any sale, conveyance, lease, or agreement provided for in this section shall be made by a public body with appraisal, public notice, advertisement, or public bidding in accordance with provisions of section 11-3909 (b).

(c) For the purpose of this section, or for the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project of a municipality, such municipality, in addition to any authority to issue bonds pursuant to section 11-3910, may issue and sell its general obligation bonds. Any bonds issued pursuant to this section shall be issued in the

manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by such municipality for public purposes generally.

History: En. Sec. 13, Ch. 195, L. 1959.

11-3914. Title of purchaser. Any instrument executed by a municipality and purporting to convey any right, title, or interest in any property under this act, shall be conclusively presumed to have been executed in compliance with the provisions of this act in so far as title or other interest of any bona fide purchasers, lessees, or transferees of such property is concerned.

History: En. Sec. 14, Ch. 195, L. 1959.

11-3915. Exercise of powers in carrying out urban renewal project. (a) A municipality may itself exercise its urban renewal project powers (as herein defined) or may, if the local governing body by resolution determines such action to be in the public interest, elect to have such powers exercised by the urban renewal agency (created by section 11-3916) or a department or other officers of the municipality as they are authorized to exercise under this act.

(b) In the event the local governing body makes such determination, such body may authorize the urban renewal agency or department or other officers of the municipality to exercise any of the following urban renewal project powers:

(1) To formulate and co-ordinate a workable program as specified in section 11-3904.

(2) To prepare urban renewal plans.

(3) To prepare recommended modifications to an urban renewal project plan.

(4) To undertake and carry out urban renewal projects as required by the local governing body.

(5) To make and execute contracts as specified in section 11-3907, with the exception of contracts for the purchase or sale of real or personal property.

(6) To disseminate blight clearance and urban renewal information.

(7) To exercise the powers prescribed by section 11-3907 (b), except the power to agree to conditions for federal financial assistance and imposed pursuant to federal law relating to salaries and wages shall be reserved to the local governing body.

(8) To enter any building or property, in any urban renewal area, in order to make surveys and appraisals in the manner specified in section 11-3907 (c).

(9) To improve, clear, or prepare for redevelopment any real or personal property in an urban renewal area.

(10) To insure real or personal property as provided in section 11-3907 (c).

(11) To effectuate the plans provided for in section 11-3907 (f).

(12) To prepare plans for the relocation of families displaced from an urban renewal area and to co-ordinate public and private agencies in such relocation.

(13) To prepare plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements.

(14) To conduct appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects.

(15) To negotiate for the acquisition of land.

(16) To study the closing, vacating, planning, or replanning of streets, roads, sidewalks, way, or other places and to make recommendations with respect thereto.

(17) To organize, co-ordinate, and direct the administration of the provisions of this act.

(18) To perform such duties as the local governing body may direct so as to make the necessary arrangements for the exercise of the powers and performance of the duties and responsibilities entrusted to the local governing body.

Any powers granted in this act that are not included in subsection (b) of this section as powers of the urban renewal agency or a department or other officers of a municipality in lieu thereof, may only be exercised by the local governing body or other officers, boards, and commissions as provided under existing law.

History: En. Sec. 15, Ch. 195, L. 1959.

11-3916. Urban renewal agency. (a) When a municipality has made the finding prescribed in section 11-3905 and has elected to have the urban renewal project powers, as specified in section 11-3915, exercised, such urban renewal project powers may be assigned to a department or other officers of the municipality or to any existing public body corporate, or the legislative body of a city may create an urban renewal agency in such municipality to be known as a public body corporate to which such powers may be assigned.

(b) If the urban renewal agency is authorized to transact business and exercise powers hereunder, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency which shall consist of five commissioners. The initial membership shall consist of one commissioner appointed for one year, one for two years, one for three years, and two for four years; and each appointment thereafter shall be for four years.

(c) A commissioner shall receive no compensation for his services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

The powers and responsibilities of an urban renewal agency shall be

exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers and responsibilities of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws shall require a larger number. Any persons may be appointed as commissioners if they reside within the municipality.

The urban renewal agency or department or officers exercising urban renewal project powers shall be staffed with the necessary technical experts and such other agents and employees, permanent and temporary, as it may require. An agency authorized to transact business and exercise powers under this act shall file, with the local governing body, on or before March 31 of each year, a report of its activities for the preceding calendar year, which report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expense as of the end of such calendar year. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the municipality and that the report is available for inspection during business hours in the office of the city clerk and in the office of the agency.

(d) For inefficiency, neglect of duty, or misconduct in office, a commissioner may be removed.

History: En. Sec. 16, Ch. 195, L. 1959.

11-3917. Prohibition against discrimination. For all of the purposes of this act, no person shall, because of race, creed, color, or national origin, be subjected to any discrimination.

History: En. Sec. 17, Ch. 195, L. 1959.

11-3918. Interested public officials, commissioners, or employees. No public official, or employee of a municipality or urban renewal agency or department or officers which have been vested by a municipality with urban renewal project powers and responsibilities under section 11-3915, shall voluntarily acquire any interest, direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban renewal project of such municipality, or in any contract or proposed contract in connection with such urban renewal project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local governing body and such disclosure shall be entered upon the minutes of the governing body. If any such official, department or division head owns or controls, or owned or controlled within two years prior to the date of hearing on the urban renewal project, any interest, direct or indirect, in any property which he knows is included in an urban renewal project, he shall immediately disclose this fact in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body, and any such official, department or division head shall not participate in any action on that particular project by the municipality or urban renewal agency, department, or officers which have been vested with urban renewal project

powers by the municipality pursuant to the provisions of section 11-3915. A majority of the commissioners of an urban renewal agency exercising powers pursuant to this act shall not hold any other public office under the municipality other than their commissionership or office with respect to such urban renewal agency, department, or offices. Any violation of the provisions of this section shall constitute misconduct in office.

History: En. Sec. 18, Ch. 195, L. 1959.

11-3919. Separability — act controlling. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall be not affected thereby.

In so far as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling. The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law.

History: En. Sec. 19, Ch. 195, L. 1959.

11-3920. Short title. This act shall be known and may be cited as the "Urban Renewal Law."

History: En. Sec. 20, Ch. 195, L. 1959.

CHAPTER 40

OPEN DITCHES

Section 11-4001. Purpose of act.
11-4002. Unfenced, open ditch declared nuisance.
11-4003. Powers of governing body.
11-4004. Notice to close and fill ditch—publication.
11-4005. Notice of intent to provide for protective devices—period allowed for compliance.
11-4006. Commercial irrigation ditches exempt.

11-4001. Purpose of act. The legislative assembly declares that the control of ditch water in inhabited areas of Montana is affected with the public interest. The purpose of this act is to prevent drowning of children in ditches filled or partially filled with water within the limits of an incorporated city or town, if such ditches terminate within the limits of such city or town. This act shall be deemed an exercise of the police power of the state in and for the protection of the welfare, health, peace and safety of the people of Montana.

Nothing in this act shall be construed as intending to effectuate the abandonment of any valid water right. This act shall be construed merely as a regulation in the public interest so that the diversion, transportation and use of water in such ditches in cities and towns shall be in a safe manner, as defined by this act.

History: En. Sec. 1, Ch. 63, L. 1961.

Cross-Reference

Power of city to regulate ditches, sec. 11-984.

11-4002. Unfenced, open ditch declared nuisance. Notwithstanding any provision contained in Title 89, Revised Codes of Montana, 1947, or any law pertaining to the use of water in Montana, it is hereby declared that water which flows through the limits of an incorporated city or town in an unfenced, open ditch that terminates within the limits of such city or town is a public nuisance, if such city or town declares it to be such nuisance, acting through its governing body.

History: En. Sec. 2, Ch. 63, L. 1961.

Cross-References

Nuisance defined, actions for, secs. 57-101, 93-6101.

Public nuisance defined, sec. 57-102.

11-4003. Powers of governing body. The governing body of the city or town is hereby given the power:

(1) To investigate the dangerous condition of such ditches terminating within the corporate limits and to declare any such ditch a public nuisance, and

(2) To determine the measures necessary to remove the danger and public nuisance, including fencing, use of culvert or other protective device based upon standards to be determined by such city or town.

History: En. Sec. 3, Ch. 63, L. 1961.

11-4004. Notice to close and fill ditch—publication. When a public nuisance has been declared as provided in this act, the city or town shall give public notice for at least sixty (60) days to owners of the ditch and of any water rights affected that such ditch has been declared a public nuisance and that it shall be closed and filled unless the owners of such rights desire to keep the ditch open. Such notice shall include publication once each week in an established newspaper published within the city or town, if one exists, or in its absence in the official county newspaper for at least eight (8) successive weeks.

History: En. Sec. 4, Ch. 63, L. 1961.

11-4005. Notice of intent to provide for protective devices—period allowed for compliance. If a person claims that the water has not been abandoned and claims the right to use water in a ditch that the city or town has declared a public nuisance, he shall notify the city or town before the expiration of the sixty (60) day period that he wishes to continue the use of such water within the city or town and that he, individually or with others, will provide such protective devices as ordered by the city or town. If such notice is given, the person or persons claiming such right or rights shall have a period not to exceed six (6) months to remove the public nuisance in the manner ordered by the city or town.

If the city or town approves the work, it shall permit the water to flow into the city or town. If the protective device is not provided, or if it does not meet specifications required by the city or town, the city or town may designate such ditch abandoned and order it closed or filled when the six month period ends.

History: En. Sec. 5, Ch. 63, L. 1961.

11-4006. Commercial irrigation ditches exempt. This act does not apply to ditches carrying water used for commercial irrigation purposes.

History: En. Sec. 6, Ch. 63, L. 1961.

CHAPTER 41

INDUSTRIAL DEVELOPMENT PROJECTS

Section 11-4101. Definition of terms.
11-4102. General municipal and county powers.
11-4103. Limited obligation bonds—form and contents—sale—negotiability.
11-4104. Provisions for security of bondholders.
11-4105. Determination of costs—terms of lease.
11-4106. Refunding of bonds.
11-4107. Use of proceeds of bond sales.
11-4108. Taxation of projects.
11-4109. Powers cumulative.
11-4110. Advice and information by state planning board.

11-4101. Definition of terms. As used in this act, unless the context otherwise requires: (1) Municipality shall mean any incorporated city or town in the state;

(2) Project shall mean any land, any building or other improvement, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use for manufacturing or industrial enterprises;

(3) Governing body shall mean the board or body in which the general legislative powers of the municipality or county are vested; and

(4) Mortgage shall mean a mortgage or a mortgage and deed of trust, or other security device.

History: En. Sec. 1, Ch. 51, L. 1965.

11-4102. General municipal and county powers. In addition to any other powers which it may now have, each municipality and each county shall have without any other authority the following powers: (1) To acquire, whether by construction, purchase, devise, gift or lease, or any one or more of such methods, one or more projects, which shall be located within this state, and may be located within, without, partially within or partially without the municipality or county;

(2) To lease to others any or all of its projects for such rentals and upon such terms and conditions as the governing body may deem advisable and as shall not conflict with the provisions of this act;

(3) To issue revenue bonds for the purpose of defraying the cost of acquiring or improving any project or projects, and to secure the payment of such bonds as provided in this act, which revenue bonds may be issued in two (2) or more series or issues where deemed advisable, and each such series or issue may contain different maturity dates, interest rates, priorities on revenues available for payment of such bonds and priorities on securities available for guaranteeing payment thereof, and such other differing terms and conditions as are deemed necessary and are not in conflict with the provisions of this act; and

(4) To sell and convey any real or personal property acquired as provided by subdivision (1) of this section, and make such order respecting the same as may be deemed conducive to the best interest of the municipality or county; provided, that such sale or conveyance shall be subject to the terms of any lease but shall be free and clear of any other encumbrance.

No municipality or county shall have the power to operate any project, referred to in this section, as a business or in any manner except as the lessor thereof, nor shall they have any power to acquire any such project, or any part thereof, by condemnation.

History: En. Sec. 2, Ch. 51, L. 1965.

11-4103. Limited obligation bonds—form and contents—sale—negotiability. (1) All bonds issued by a municipality or county under the authority of this act shall be limited obligations of the municipality or county. Bonds and interest coupons, issued under the authority of this act, shall not constitute nor give rise to a pecuniary liability of the municipality or county or a charge against its general credit or taxing powers. Such limitation shall be plainly stated upon the face of each of such bonds.

(2) The bonds, referred to in subsection (1) of this section, may (a) be executed and delivered at any time and from time to time, (b) be in such form and denominations, (c) be of such tenor, (d) be in registered or bearer form either as to principal or interest or both, (e) be payable in such installments and at such time or times not exceeding thirty (30) years from their date, (f) be payable at such place or places, (g) bear interest at such rate or rates, payable at such place or places, and evidenced in such manner, (h) be redeemable prior to maturity, with or without premium, and (i) contain such provisions not inconsistent herewith, as shall be deemed for the best interest of the municipality or county and provided for in the proceedings of the governing body whereunder the bonds shall be authorized to be issued.

(3) Any bonds, issued under the authority of this act, may be sold at public or private sale in such manner and at such time or times as may be determined by the governing body to be most advantageous. The municipality or county may pay all expenses, premiums and commissions which the governing body may deem necessary or advantageous in connection with the authorization, sale and issuance thereof from the proceeds of the sale of said bonds or from the revenues of the projects.

(4) All bonds, issued under the authority of this act, and all interest coupons applicable thereto shall be construed to be negotiable instruments, despite the fact that they are payable solely from a specified source.

History: En. Sec. 3, Ch. 51, L. 1965.

Collateral References

Municipal Corporations⇐265-267, 278, 285-286, 457-463, 858-861, 866-867, 869, 872-877.

64 C.J.S. Municipal Corporations §§ 1835, 1842, 1902, 1905, 1909, 1911-1912.

11-4104. Provisions for security of bondholders. (1) The principal of and interest on any bonds issued under the authority of this act (a) shall be secured by a pledge of the revenues out of which such bonds

shall be made payable, (b) may be secured by a mortgage covering all or any part of the project, and (c) may be secured by a pledge of the lease of such project, or (d) may be secured by such other security device as may be deemed most advantageous by the issuing authority.

(2) The proceedings, under which the bonds are authorized to be issued under the provisions of this act, and any mortgage given to secure the same may contain any agreements and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting (a) the fixing and collection of rents for any project covered by such proceedings or mortgage, (b) the terms to be incorporated in the lease of such project, (c) the maintenance and insurance of such project, (d) the creation and maintenance of special funds from the revenues of such project, and (e) the rights and remedies available in the event of a default to the bondholders or to the trustee under a mortgage, all as the governing body shall deem advisable and as shall not be in conflict with the provisions of this act; provided, that in making any such agreements or provisions a municipality or county shall not have the power to obligate itself except with respect to the project and the application of the revenues therefrom, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers.

(3) The proceedings authorizing any bonds under the provisions of this act and any mortgage securing such bonds may provide that, in the event of a default in the payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or mortgage, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the project in accordance with such proceedings or the provisions of such mortgage.

(4) Any mortgage, made under the provisions of this act, to secure bonds issued thereunder, may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor. No breach of any such agreement shall impose any pecuniary liability upon a municipality or county or any charge upon their general credit or against their taxing powers.

History: En. Sec. 4, Ch. 51, L. 1965.

11-4105. Determination of costs—terms of lease. (1) Prior to the leasing of any project, the governing body must determine and find the following: The amount necessary to pay the principal of and the interest on the bonds proposed to be issued to finance such project; the amount necessary to be paid into any reserve funds which the governing body may deem it advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the project including taxes;

and, unless the terms under which the project is to be leased provide that the lessee shall maintain the project and carry all proper insurance with respect thereto, the estimated cost of maintaining the project in good repair and keeping it properly insured.

(2) The determinations and findings of the governing body, required to be made by subsection (1) of this section, shall be set forth in the proceedings under which the proposed bonds are to be issued. Prior to the issuance of the bonds authorized by this act, the municipality or county shall lease the project to a lessee or lessees under an agreement conditioned upon completion of the project and providing for payment to the municipality or county of such rentals as, upon the basis of such determinations and findings, will be sufficient (a) to pay the principal of and interest on the bonds issued to finance the project, (b) to pay the taxes on the project, (c) to build up and maintain any reserves deemed by the governing body to be advisable in connection therewith, and (d) unless the agreement of lease obligates the lessees to pay for the maintenance and insurance of the project, to pay the costs of maintaining the project in good repair and keeping it properly insured. Subject to the limitations of this act, the lease or extensions or modifications thereof may contain such other terms and conditions as may be mutually acceptable to the parties, and notwithstanding any other provisions of law relating to the sale of property owned by municipalities and counties, such lease may contain an option for the lessees to purchase the project on such terms and conditions as may be mutually acceptable to the parties.

History: En. Sec. 5, Ch. 51, L. 1965.

11-4106. Refunding of bonds. Any bonds issued under the provisions of this act and at any time outstanding may at any time and from time to time be refunded by a municipality or county by the issuance of its refunding bonds in such amount as the governing body may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds to be so refunded, together with any unpaid interest thereon and any premiums and commissions necessary to be paid in connection therewith; provided, that an issue of refunding bonds may be combined with an issue of additional revenue bonds on any project when the combined total meets the requirements of subsection (1) of section 11-4105. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby; provided, that the holders of any bonds to be so refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable by maturity date, option to redeem, or otherwise, or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption by option or otherwise. Any refunding bonds issued under the authority of this act shall be subject to the provisions contained in section 11-4103 and may be secured in accordance with the provisions of section 11-4104.

History: En. Sec. 6, Ch. 51, L. 1965.

Compiler's Note

The compiler has substituted the reference to "subsection (1)" for an apparently erroneous reference to "subsection (5)" in the first sentence.

11-4107. Use of proceeds of bond sales. The proceeds from the sale of any bonds issued under authority of this act shall be applied only for the purpose for which the bonds were issued; provided, that any accrued interest and premium received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold; and provided further, that if for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then such unneeded portion of said proceeds shall be applied to the payment of the principal of or the interest on said bonds. The cost of acquiring or improving any project shall be deemed to include the following: The actual cost of acquiring or improving real estate for any project; the actual cost of construction of all or any part of a project which may be constructed, including architects' and engineers' fees, all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition or improvement; and the interest on such bonds for a reasonable time prior to construction, during construction, and for not exceeding six (6) months after completion of construction.

History: En. Sec. 7, Ch. 51, L. 1965.

11-4108. Taxation of projects. Notwithstanding that title to a project may be in a municipality or county, such projects shall be subject to taxation to the same extent, in the same manner, and under the same procedures as privately owned property in similar circumstances, if such projects are leased to or held by private interests on both the assessment date and the date the levy is made in any year; but such projects shall not be subject to taxation in any year if they are not leased to or held by private interests on both the assessment date and the date the levy is made in any year; provided, that where personal property owned by a municipality or county is taxed under this section and such personal property taxes are delinquent, levy by distress warrant for collection of such delinquent taxes may only be made on personal property against which such taxes were levied.

History: En. Sec. 8, Ch. 51, L. 1965.

11-4109. Powers cumulative. Neither this act nor anything herein contained shall be construed as a restriction or limitation upon any powers which a municipality or county might otherwise have under any laws of this state, but shall be construed as cumulative.

History: En. Sec. 9, Ch. 51, L. 1965.

11-4110. Advice and information by state planning board. The state planning board shall furnish advice and information in connection with a project when requested to do so by a county or municipality.

History: En. Sec. 10, Ch. 51, L. 1965.

Separability Clause

Section 11 of Ch. 51, Laws 1965 read "If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration of invalidity shall not affect the validity of the remaining portions thereof."

CHAPTER 42

CITY-COUNTY BUILDING

Section 11-4201. Acquisition or construction and management of city-county building.
11-4202. Contents of contract between city and county.
11-4203. Bonding authority undiminished.

11-4201. Acquisition or construction and management of city-county building. A city and a county may, by contract, construct, purchase or lease, and manage a city-county building to house the offices of city government and county government.

History: En. Sec. 1, Ch. 45, L. 1967.

11-4202. Contents of contract between city and county. The contracts shall provide (1) for the proposed expenditure for the construction, purchase or lease of the city-county building and the proposed cost of equipping and operating the building. The total cost of the joint institution shall be divided between the city and county in such manner as they shall determine.

(2) for the management of the building by a method which will provide that the city and county shall each be represented and have an active part in the management of the building.

(3) that the management of the joint institution shall have such powers as will be necessary to accomplish the purposes of this act.

History: En. Sec. 2, Ch. 45, L. 1967.

11-4203. Bonding authority undiminished. (1) This act shall not be interpreted as modifying or diminishing the bonding authority of counties or cities as provided by law.

History: En. Sec. 3, Ch. 45, L. 1967.

Compiler's Note

Section 3 of Chapter 45, Laws of 1967 did not contain a subsection or subdivision designation "(2)."

CHAPTER 43

CITY-COUNTY DISASTER EMERGENCY TAX

Section 11-4301. Definitions.
11-4302. Determination of disaster—resolution.
11-4303. Council meeting following mayor's receipt of resolution.
11-4304. Council's resolution—inclusion of facts of disaster.
11-4305. Estimation of expenses and levying of tax.
11-4306. Emergency tax surplus.

11-4301. Definitions. As used in this act: (1) An "emergency" may be:

(a) A fire, flood, explosion, storm, blizzard, earthquake or epidemic; or

(b) An occurrence requiring the immediate preservation of order or public health; or

(c) An occurrence requiring the restoration of a condition of usefulness which has been destroyed; or

(d) An occurrence which requires relief of a stricken community.

(2) "County disaster committee" includes:

(a) The members of the agricultural stabilization and conservation county committee of the county involved;

(b) The county commissioners and mayor or mayors of the county involved;

(c) The office manager of the soil conservation service office in the county involved;

(d) The county civil defense director;

(e) The county agriculture extension agent;

(f) Such other persons not to exceed two (2) in number as the county commissioners may appoint.

(3) "Council" means the city council of an incorporated municipality.

(4) "Board" means the board of county commissioners.

(5) "Mayor" means the mayor of an incorporated municipality.

(6) "Municipality" means an incorporated municipality.

History: En. Sec. 1, Ch. 97, L. 1967.

11-4302. Determination of disaster—resolution. The county disaster committee shall determine by a majority vote when an emergency exists. Upon the determination that an emergency does exist, they shall submit a resolution to the mayor or mayors of municipalities of the county and to the chairman of the board.

History: En. Sec. 2, Ch. 97, L. 1967.

11-4303. Council meeting following mayor's receipt of resolution. (1) Upon receipt of the resolution the mayor or mayors and the chairman of the board shall call joint or separate meetings of the council or councils and the board, respectively.

(2) A mayor or chairman of a board shall give reasonable notice of the time and place at which the meeting or meetings shall be held.

History: En. Sec. 3, Ch. 97, L. 1967.

11-4304. Council's resolution—inclusion of facts of disaster. (1) If at the meeting or meetings the council and the board respectively find from the resolution of the county disaster committee that an emergency exists, they shall place in their respective minutes a resolution stating facts constituting the emergency.

History: En. Sec. 4, Ch. 97, L. 1967.

Compiler's Note

Section 4 of Chapter 97, Laws of 1967 did not contain a subsection or subdivision designation "(2)."

11-4305. Estimation of expenses and levying of tax. (1) The council and the board shall estimate expenditures and levy an emergency millage to cover the expenditures. The millage levied by the council shall not exceed two (2) mills on the municipality's taxable valuation. The millage levied by the board shall not exceed two (2) mills on the taxable valuation of the county outside the municipalities.

(2) No expenditure of revenue received from the millage shall be made without approval of the appropriate levying body.

(3) An additional levy or levies may be made by the appropriate levying body providing that the sum of the levies for emergencies as set forth in this act shall not exceed two (2) mills in any one year.

(4) All levies under this act may only be passed by a unanimous vote of the appropriate body.

(5) An event shall not be determined to be an emergency under section 11-4302 more than two (2) weeks after the occurrence of such event.

History: En. Sec. 5, Ch. 97, L. 1967.

11-4306. Emergency tax surplus. Funds levied for an emergency and remaining when no further expenditures are necessary shall remain in a separate emergency fund and shall be used only for expenditures arising from future emergencies determined in accordance with section 11-4302.

History: En. Sec. 6, Ch. 97, L. 1967.

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